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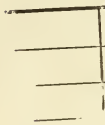

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THE

WRITINGS AND SPEECHES

OF

SAMUEL J. TILDEN

EDITED BY

JOHN BIGELOW

IN TWO VOLUMES

VOL. II.

NEW YORK
HARPER AND BROTHERS

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WRITINGS AND SPEECHES

OF

SAMUEL J. TILDEN.

XXXI.

The services which Mr. Tilden had rendered in purifying the judiciary and in sending to prison or into exile the gang of rogues who, under the lead of William M. Tweed, had been plundering the treasury of New York city and debauching the members of our municipal and State legislatures, and to a greater or less degree the public Press, naturally concentrated upon him the eyes of the New York Democracy as the most suitable candidate for governor that the party could provide in 1874.

The Democratic State Convention assembled at Syracuse on Thursday, the 17th of September of that year, Horatio Seymour presiding. Mr. Tilden was nominated on the first ballot. In the evening the citizens of Syracuse, despite a furious rain-storm, assembled in front of the Vanderbilt House to serenade him. In an interval of the music Mr. Tilden was conducted to the balcony and introduced to the assembled multitude by the late Attorney-General Pratt, of Syracuse. The brief speech which Mr. Tilden made, after silence and order had been restored, gave the keynote of the campaign, — retrenchment in public expenditures, reform in the public administration, stricter accountability of public officers, and uncompromising resistance to "the bad ambition of a third term," which was then imputed, with only too much justice, to President Grant and his intimate friends.

PROPERTY OF THE
CITY OF NEW YORK

ADMINISTRATIVE REFORM. — A CHANGE OF MEN NECESSARY TO A CHANGE OF MEASURES.

Fellow-Citizens, — I thank you for the honor you do me. I know it is the cause, more than its representative, that in such a storm calls out this manifestation of interest and enthusiasm. And well it may!

A peaceful revolution in all government within the United States is going on to a sure consummation. Ideas of change pervade the political atmosphere. They spring up from the convictions of the people. The supporters of the Administration have lost confidence in it and themselves. The Opposition become more intense in their convictions and in their action. Multitudes pass over from support to opposition, or sink into silent discontent.

Are we asked the causes? The answer is found in the condition of our country. The fruits of a false and delusive system of government finances are everywhere around us. All business is in a dry-rot. In every industry it is hard to make the two ends meet. Incomes are shrinking away, and many men hitherto affluent are becoming anxious about their means of livelihood. Working-men are out of employment. The poor cannot look out upon the light or air of heaven but they see the wolf at the door.

Inflation no longer inflates. Even while paper money is swelling out a new emission, values sink. Bankers' balances in the monetary centres are increased, and call-loans are cheaper; but those who need more capital can neither buy nor borrow any of the forty-four millions of new greenbacks.

The truth is that our body politic has been over-drugged with stimulants. New stimulants no longer lift up the languid parts to a healthy activity, they merely carry more blood to the congested centres.

Only one thing remains in its integrity, — that is our taxes. Amid general decay, taxation puts out new sprouts and grows luxuriantly. If I may borrow a figure from the greatest of our American poets, —

> "It seats itself upon the sepulchre,
> And of the triumphs of its ghastly foe
> Makes its own nourishment."

National taxes, State taxes, county taxes, town taxes, municipal taxes! The collector is as inevitable as the grim messenger of death. Incomes, profits, wages, all these fall; but taxes rise.

Six years ago I had occasion to say that while values were ascending, and for some time after, it might be easy to pay these taxes out of the froth of our apparent wealth; but that when the reaction of an unsound system of government finance should set in, the enormous taxation which that system had created would not only consume our incomes and profits, but trench upon our capital. What was then prediction is now experience. Retrenchment in public expenditure; reform in public administration; simplification and reduction of tariffs and taxes; accountability of public officers, enforced by better civil and criminal remedies, — the people must have these measures of present relief, measures of security for the future.

The Federal Government is drifting into greater dangers and greater evils. It is rushing onward in a career of centralism, absorbing all governmental powers and assuming to manage all the affairs of human society. It undertakes to direct the business of individuals by tariffs not intended for legitimate taxation, by granting special privileges, and by fostering monopolies at the expense of the people. It has acquired control of all banks. It has threatened to seize on all the tele-

graphs. It is claiming jurisdiction of all railroad corporations chartered by the States and amenable to the just authority of the States. It is going on to usurp control of all our schools and colleges. Stretching its drag-net over the whole country, and forcing editors and publishers away from their distant homes into the courts of the District of Columbia, it is subjecting the free Press of the whole United States, for criticism of the Administration, to trial by creatures of the Administration, acting under the eye of the Administration. It has dared to enforce this tyranny against a freeman of the metropolis of our State.[1]

These tendencies must be stopped, or before we know it the whole character of our government will be changed; the simple and free institutions of our fathers will not only have become the worst government that has ever ruled over a civilized people, but it will also be the most ignorant. A distinguished Republican statesman — I mean Senator Conkling — lately told me that more than five thousand bills were before Congress at its last session. In a little time, as we are now going on, there will be twenty thousand. Nobody can know what is in them.

We have a country eighteen times as large as France, with a population of forty-three millions, doubling every thirty years, and full of activities and interests. A centralized government, meddling with everything and attempting to manage everything, could not know the wants or wishes of the people of the localities; it would be felt only in its blunders and its wrongs. It would be the most irresponsible, and therefore not only the most oppressive, but also the most corrupt, with which any people have been cursed.

[1] This refers to an attempt, in July, 1873, to take Mr. Charles A. Dana, the editor of the "Sun," from New York to Washington on a charge of libel to be tried in the police court of that city *without a jury*. The United States district attorney applied to the United States district judge for a warrant of removal; but after a masterly argument in opposition by the late William O. Bartlett, Judge Blatchford, in a memorable decision, refused the application (see 7 Benedict's Reports, p. 1), holding the proposed mode of trial to be unconstitutional.

To-day the advances which we have made toward this system are maturing their fatal fruits. The Federal Administration is tainted with abuses, with jobbery, and with corruption. In the dominion which it maintains over the reconstructed Southern States, organized pillage, on a scale tenfold greater than that of the Tweed Ring, is the scandal and shame of the country.

Civil liberty is endangered. It is now certain that President Grant nourishes the bad ambition of a third term. If the sacred tradition established by Washington, Jefferson, Madison, and Jackson can be broken, the President may be re-elected indefinitely; and wielding from the centre the immense patronage which will grow out of such vast usurpation of authorities by the Federal Government, he will grasp the means of corrupt influence by which to carry the elections. There will be no organized thing in the country of sufficient power to compete with him or to resist him. The forms of free government may remain, but the spirit and substance will be changed; an elective personal despotism will have been established; Roman history, in the person of Augustus Cæsar, will be repeated.

Thoughtful men are turning their minds to the means of escape from these overshadowing evils. The Republican party cannot save the country. Ideas of governmental meddling and centralism dominate it; class interests hold it firmly to evil courses. Throngs of office-holders, contractors, and jobbers, who have grown up in fourteen years of administration, in four years of war and during an era of paper money, are too strong in the machinery of the party for the honest and well-intending masses of the Republicans. The Republican party could contribute largely to maintain the Union during the civil war; it cannot reconstruct civil liberty and free institutions after the peace.

A change of men is necessary to secure a change of measures. The Opposition is being matured and educated to take the administration. The Democracy, with the traditions of its

best days, will form the nucleus of the opposition. It embraces vastly the larger body of men of sound ideas and sound practices in political life. It must remove every taint which has touched it in evil times. It must become a compact and homogeneous mass. It must gather to its alliance all who think the same things concerning the interests of our Republic. It is becoming an adequate and effective instrument to reform administration and to save the country. It reformed itself in order that it might reform the country.

And now in your name and in the name of five hundred thousand voters we represent, we declare that in this great work we will tread no step backward. Come weal or come woe, we will not lower our flag. We will go forward until a political revolution shall be worked out, and the principles of Jefferson and Jackson shall rule in the administration of the Federal Government.

Let us never despair of our country. Actual evils can be mitigated; bad tendencies can be turned aside; the burdens of government can be diminished; productive industry will be renewed; and frugality will repair the waste of our resources. Then shall the golden days of the Republic once more return, and the people become prosperous and happy.

XXXII.

Shortly after the fall election of 1874 the Young Men's Democratic Club — a political organization then only about three years old — tendered to the Governor-elect a public reception at Delmonico's. In response to a toast proposed by Mr. Townsend Cox, the president of the Club, Mr. Tilden spoke at some length of the political duties of young men.

THE POLITICAL DUTIES OF YOUNG MEN. — ADDRESS TO THE YOUNG MEN'S DEMOCRATIC CLUB.

Gentlemen of the Club, — I should have scarcely felt myself at liberty to-night to attend any ordinary festivity; but a meeting of the young men of promise that I see about me, who have associated for the purpose of securing co-operation in the conduct and fulfilment of the duties of citizenship, — too much neglected in this community and everywhere, — was an occasion I felt was entitled to whatever of commendation and encouragement my presence could confer.

I had occasion three years ago, after a period of political revolution, and on several occasions since, to express my sense of the consequences in a republican community of the disregard of the duties of citizenship, and to say that it is indispensably necessary in the present condition of our country that the young men — young men whose situation would enable them to make some sacrifice — should come forward and do their duty to the communities in which they live.

Doubtless several circumstances have contributed to a pretty general neglect of these duties. Official station does not bring with it as much distinction as it did in the early days of the Republic; men have not the same incentive, therefore, to take part in public affairs. And then in modern times have sprung up innumerable industrial enterprises, and other organizations conceived with special reference to the wants of society, which have attracted very largely the young men of promise and withdrawn them from politics and public affairs. Then again, in the last twenty years — for it is little more than that period since the ill-omened repeal of the Missouri Compromise broke up the

traditions of ancient settlements and kindled the flame of sectional controversy and sectional hatred — it has mattered little what a man's opinions were, what his conduct had been, in regard to any of the ordinary concerns of government or human society. It was enough that he took a particular view on certain questions which excited the public mind, — questions of a social character, questions of a sentimental character. Government and administration of the concerns that affect human society seemed to receive little attention from the people. The consequence was that we almost ceased to educate young men for their part in carrying on the functions of government.

I had occasion in 1867 to look around for somebody to nominate, — at least to exercise what little influence I had in the nomination; and in conversation with a gentleman not now living, who agreed with me that we ought to introduce into the public affairs of this State some young men, after he had named all he could think of, I told him they were all about fifty years old, — "You are fifty, and I am fifty, and every one is fifty." And that was the *finale* of our attempt to discover young men fit to be charged with public trusts.

Now I don't doubt that there were young men of competency and character; but the difficulty was there had been no opportunity to train any, and if they existed, they were difficult to find. We have had lately no schools of statesmanship in this State or in the nation. There have been no statesmen of the younger class to carry on the government of this country. And it is because there is in this society the germ of a better future for our country that I came here to-night to do what I can to encourage you. I hope you will go forward in the work you have begun. We who are older than most of those I see around me would look in vain for those to whom we can hand over these great trusts if they are not formed within the next few years. I think there is no institution, no society of men in this country, that is capable of being more serviceable in this respect than the Club which I have the pleasure to meet to-night. Go on, young men; perfect yourselves in political education; go

back to the original fountains of Democratic-Republican opinions in regard to government; go back to the primitive sources of thought in our own country. You will find there all that you will need to apply to-day. Seek the application of the great principles of popular government to the problems that are before us. Seek above all to elevate the standard of official morality in the public trusts of the country. I can remember perfectly well when you might stand in the legislative halls of this State, — it is not more than eight and twenty years ago, — and no man would suspect any member of being under any influence, consideration, or motive that was not perfectly legitimate. I have not time to-night to point out or trace the causes that have produced such a lamentable decline of official morality. We are to look to the future; we are to seek a remedy for the state of things through which we have been passing: and in nothing can it be sought so effectively as in a distinct effort to elevate the tone of morality on political questions, and to raise our standards of official life. We have reached a period in national history in which we can no longer foment sectional strife and conflict and go on prosperously with the ordinary affairs of government. We have reached a period in which burdensome taxation forces intelligent consideration of the methods of raising public revenue, and, above all, the methods of reducing the very undue share which is taken from the earnings of private industry to carry on the government in this country, whether municipal, State, or Federal.

We have to meet these political and social problems; we have to meet them with intelligence and courage, and above all, with trust in the masses of our people. I have been one of those who, amid periods pregnant with despondency, still retained that trust in the body of the American people with which I began life. I did not incline to censure those who sometimes felt despondent; but I myself never lost courage, never lost my belief that the element of human society which seeks for what is good is more powerful, if we will trust it, than all those selfish combinations that would obtain unjust

advantage over the masses of the people. And I believe I see here to-night in the intelligent young men who compose this Club, who have long futures before them, — I believe I see among them those who will be able, if they retain their trust in the people, if they retain their devotion to principles of right, to form for this city, for this State, and for this country a great and noble future.

Gentlemen, go onward in the course you have marked out for yourselves, each according to his abilities and according to the means at his command. Go forward, I say, with courage, energy, zeal, and devotion; and if you seek the objects of ordinary desires in human society, if you seek fortune, if you seek independence, if you seek honor, remember — I beg that you will remember — that you may acquire them on terms of virtuous self-respect if only you will have courage to insist upon those terms and submit to none other.

I had occasion a few years ago to say to a class of young men about to take their positions in the profession of law that I believed, and I do believe, it was equally certain that talent, ability, honor, would achieve everything that the human heart ought to desire, if only it were insisted that they should be achieved without any concession of one's conviction of right or one's sense of duty; that it was perhaps not quite equally easy, perhaps not quite so speedy a success, but far more certain; and when the object was attained, it would not turn to ashes in their grasp. I have never known a man so eager for objects of ambition or of fortune that he sought to obtain them by indirection, who did not find, when they were attained, that they failed to satisfy. Even a man who has stolen largely of public money begins to desire public esteem and to turn round and contrive how to get it; and if he cannot get the reality, he seeks to get the semblance of it. The human heart is incapable of being satisfied with anything but real victories in the race of life; and therefore, young men, — and this is the last observation I have to make to you, — ever feel that the right will be successful, and the right only.

XXXIII.

At the New York State election in November, 1874, Mr. Tilden received 416,391 votes for governor, and John A. Dix, the Republican candidate, 366,074. Mr. Tilden's plurality was 50,317. Two years before, Mr. Dix had been elected governor by a majority of 55,451. The new Governor was inaugurated on the 1st day of January, 1875. At the hour of eleven in the morning of that day the Governor-elect, arm in arm with the retiring Governor, and followed by the members of their respective staffs, entered the Assembly Chamber; and, placing themselves in front of the Speaker's desk, Governor Dix addressed the Governor-elect as follows: —

Mr. Tilden, — The people of the State have called you to preside over the administration of their government by a majority which manifests the highest confidence in your integrity, ability, and firmness. I need not say to you, who have had so long and familiar an acquaintance with public affairs, that in a State of such magnitude as ours, with interests so vast and diversified, there is a constant demand upon its chief magistrate for the exercise of those essential attributes of statesmanship. It is gratifying to know that the amendments to the Constitution, approved and ratified by the people at the late general election, by limiting the powers of the Legislature in regard to local and special laws, will in some degree lighten the burden of your arduous and responsible duties. While a material progress has been made during the last two years in the correction of abuses, much remains to be done; and the distinguished part you have borne in the work of municipal reform in the city of New York gives assurance that under your auspices the great interests of the State will

be vigilantly guarded. I tender you my sincere wishes that your labors in the cause of good government may be as successful here as they have been elsewhere, and that your administration may redound to your high honor and to the lasting prosperity of the people of the State.

Governor Tilden responded as follows.

INAUGURATION SPEECH OF GOVERNOR TILDEN.

Governor Dix, — It is he who has completed a period of distinguished public service, and, having gathered all its honors, has nothing left to him but to lay down its burdens, that is to be truly congratulated on this occasion. I cannot stand in this hall to assume the chief executive trust of the people of this State, now to be transferred by you, without my thoughts turning upon one,[1] your friend and mine and my father's, who held it when in early manhood I came here, a member of the Legislature, to sustain his administration. In the interval, how vast and diversified have the interests become which are under the guardianship of the State administration! To build up this great commonwealth in her polity and institutions until they shall become a greater blessing to all the people within her jurisdiction and an example worthy of imitation by other communities, is a work that should satisfy any human ambition. I had hoped to pass the coming winter in the cradle of ancient literature and arts. In surrendering the duties you have so honorably performed, I understand that you find an opportunity of visiting a portion of our own country not inferior in natural advantages to the renowned climes of the Old World. I felicitate you on the pleasures to which you may look forward, and beg leave to assure you that you and every member of your accomplished family will carry with you my warmest wishes for your happiness.

[1] Silas Wright.

XXXIV.

When Mr. Tilden entered upon the duties of his office as Governor, the Republicans had a majority in the Senate and the Democrats a majority in the Assembly. This embarrassing division of the powers of the government continued through the two years of his administration. His first Message was looked for with unusual interest, for several reasons.

Elected distinctly upon reform issues, in what way, by what recommendations would he respond to the expectations of those who had given him an unprecedented majority? In what way would his earnest and radical views on questions of municipal government find expression? How would he treat the then burning problems of currency and finance, as to which there was no higher authority in the country, and in which no State in our Union had such a vital interest as New York? Upon all these questions public curiosity was destined to be fully satisfied. His first Message was communicated to the Legislature on the 5th of January, and enjoyed the unexampled distinction of being widely republished throughout the Union. The portion devoted to the currency and finance would add to the value of any work on political economy that has yet been published; while its great truths are likely to penetrate and inform all works of any authority on economical science likely to be published for generations to come. The portion devoted to what he terms "the Erie Canal trust" is only less remarkable for the value of its information, the wisdom of its suggestions, and the compact vigor with which both are presented, because they relate to a subject of less, though not of inconsiderable, national concern.

FIRST ANNUAL MESSAGE.

Executive Chamber, Albany, Jan. 5, 1875.

To the Legislature.

At the advent of a new year, when the public bodies assemble to consult in respect to the affairs and to transact the business of the State, our first thought should be to offer up devout thanksgiving to the Supreme Disposer of events, for the blessings which we have enjoyed during the year now closed. Our great commonwealth comprises a population of more than four and a half millions, largely exceeding that of the whole United States at the formation of the Federal Government, and embracing vastly more extensive and diversified interests and activities. Our sense of duty ought to be commensurate with the magnitude of the trust conferred upon us by the people. Forming, as our State does, so important a part of the American Union, the benefits of an improved polity, of wise legislation, and of good administration are not confined to our own citizens, but are felt directly and by their example in our sister States and in our national reputation throughout the world. Mindful, with you, of these considerations, I proceed to perform the duty enjoined by the Constitution upon the Governor, to "communicate, by message to the Legislature," "the condition of the State," and to "recommend such matters to them as he shall deem expedient."

Receipts and expenditures.

The receipts into and payments from the treasury on account of all the funds, except the Canal and Common School Funds, for the fiscal year ending Sept. 30, 1874, were as follows: —

Receipts	$26,465,370.43
Payments	19,636,308.36
Balance in the Treasury Sept. 30, 1874	$6,829,062.07
The available balance amounted to	6,494,881.44

The difference is made up by the defalcation in the State Treasury, in 1873, of $304,957.91, and the sum of $29,222.72 is an old balance due from the Bank of Sing Sing.

State debt.

On the 20th September, 1873, the total funded debt was $36,530,406.40, classified as follows: —

General fund	$3,988,526.40
Contingent (stock issued to the Long Island Railroad Company)	68,000.00
Canal	11,352,880.00
Bounty	21,121,000.00
	$36,530,406.40

During the months of August and September, 1873, stocks of the Bounty Loan were purchased to the amount of $306,000, but not cancelled until after Sept. 30, 1873. Deducting this sum, the Bounty Debt amounted to $20,815,000, and the total debt to $36,224,406.40.

On the 30th of September, 1874, the total funded debt was $30,199,456.40, classified as follows: —

General fund	$3,988,526.40
Contingent	68,000.00
Canal	10,230,430.00
Bounty	15,912,500.00
	$30,199,456.40

The actual reduction of the State debt during the fiscal year ending Sept. 30, 1874, by cancellation of matured stocks and by the purchase of $4,902,500 of Bounty Loan 7's of 1877 for the Bounty Debt Sinking Fund, is $6,024,950.

In addition to the $4,902,500 of Bounty Stock purchased for the Bounty Debt Sinking Fund during the last fiscal year and

cancelled, there have been investments for that sinking fund, since the date of the last report to the present time, in State securities and Government registered bonds to the amount of $4,381,500, at a cost of $4,972,091.35; add $327,283.88 premium and $3,210 commissions on Bounty Loan Stock purchased and cancelled, and $1,421,584 interest on Bounty Debt, making a total of $11,626,667.23 paid on account of this sinking fund since the date of last report to the present time. The securities now held in trust for this sinking fund amount, at their par value, to $6,802,944.09, which could be disposed of, at the present market rates, at an average premium of over 12 per cent.

The following statement shows the amount of the State debt on the 30th of September, 1874, after deducting the unapplied balances of the sinking funds at that date: —

	Debt on Sept. 30, 1874.	Balance of Sinking Funds on Sept. 30, 1874.	Balance of Debt after applying Sinking Funds.
General Fund	$3,988,526.40	$4,142,693.84	
Contingent	68,000.00	32,823.49	$35,176.51
Canal	10,230,430.00	1,561,018.99	8,669,411.01
Bounty	15,912,500.00	* 7,125,278.20	8,787,221.80
	$30,199,456.40	$12,861,814.52	$17,491,809.32

The State debt on the 30th of September, 1873, after deducting the unapplied balances of the sinking funds, amounted to	$21,191,379.34
On the 30th of September, 1874, to	17,491,809.32
Showing a reduction of	$3,699,570.02

Taxes.

The State tax levy for the current year amounted to seven and a quarter mills. The total amount of the tax will be $15,727,482.08; about $900,000 in excess of the amount levied during the preceding fiscal year.

* Deducting interest accrued to Oct. 1, 1874, payable Jan. 1, 1875.

Summary statements in respect to the banks, savings-banks, trust, loan, and indemnity companies, insurance companies, quarantine, the Emigration Commission, common schools, colleges, and academies, the State Library and Museum, the National Guard, the soldiers of the war of 1812, the war claims against the United States, the salt springs, and the State prisons are appended. The full reports of the public officers and boards charged with the special care of these subjects will be transmitted as soon as their preparation is completed. Your attention is invited to them, and especially to the report of the comptroller, which will be submitted at the opening of the session.

Other departments of the State.

The Constitution provides that an enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year 1855 and at the end of every ten years thereafter.

State census.

Chapters 64 and 181 of the Laws of 1855, and Chapter 34 of the Laws of 1865, which remain in full force, prescribe the manner of taking the enumeration.

These Acts require the Secretary of State to prepare uniform blank returns and abstracts for the purpose of taking the enumeration and obtaining statistical information as to population and social statistics, the resources and interests of the State, individual and associated industry, agriculture, the mechanic arts, commerce and manufactures, education, and other information of great value to the statistician and to all classes of citizens, and will probably require little or no modification.

It will be necessary for the Legislature to make an appropriation to enable the Secretary of State to carry into effect the provisions of the Constitution and of the statutes above referred to. A sum equal to the amount appropriated in 1865 for that purpose, by Chapter 598 of the Laws of that year, will probably be sufficient.

The Secretary of State has taken preliminary steps toward the enumeration, and looks to the Legislature for an early appropriation to enable him to go forward with the work.

Pauperism.

The Annual Report of the State Board of Charities will be laid before the Legislature, and I commend it to your attention. It will contain the results of a special examination in respect to the condition of children in the poor-houses, and the subjects of out-door relief and alien paupers. The laws relating to pauperism need revision and amendment. The growth of the State in wealth and population has brought with it more complex relations between capital and labor, which should be carefully studied, in order that legislation may be adapted to their requirements. I suggest whether it is not advisable that a commission be appointed to investigate and report upon the management and relief of the poor, and to propose such legislation as will tend to relieve the industry of the State from the evils which result from poor-laws vicious or inadequate in conception, or defective in execution.

Centennial Exhibition.

The celebration of the Centennial Anniversary of American Independence will occur in the year 1876. Under the auspices of the General Government an international exhibition of arts, manufactures, and natural products will be held in the city of Philadelphia. Provision has already been made for the appointment of a board of five commissioners to represent this State, who are to serve without compensation. I recommend a moderate appropriation of money, which will be required to defray the necessary expenses of the commission, and enable this State to take such part in the exhibition as will testify our sense of the greatness of the event commemorated, and is suitable to the dignity of our Commonwealth.

Constitutional amendments.

The adoption of the recent amendments to the Constitution renders necessary some important legislation in order to carry them into full effect. The changes made in Article II. require corresponding changes in the election laws with respect to challenges and the oaths thereupon, and the enactment at the present session of a law "excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."

The amendment of Section 4 of Article VIII. of the Constitution requires the enactment of a "general law conforming all charters of savings-banks, or institutions for savings, to a uniformity of powers, rights, and liabilities."

The addition of Article XV. necessitates the passage of an act prescribing the punishment for the offence of bribery, created in Sections 1 and 2. Some legislation may be necessary in consequence of the change in the mode of compensating members of the Legislature, and in some other matters which will readily occur to you.

The section added to Article III. as Section 18 requires the passage of general laws providing for the cases in which special legislation is prohibited by that section. Many of these cases are within existing general laws, and with respect to several others no immediate legislation seems to be required. Doubtless, however, some legislation is expedient, either in the way of enacting statutes providing for the cases to which the existing statutes do not apply, or in the way of amendments to existing statutes.

The provision prohibiting special legislation in the cases specified is the amendment from which the largest benefits have been anticipated. In framing the general laws which are to provide for these cases, great caution will be necessary. The part I took in the Convention of 1846, and even before the enactment of the general banking law of 1838, in advocating the principle of general laws in its application to the creation of corporate bodies, which have been practical monopolies, and to other cases where it seemed to be safely applicable, may justify me in suggesting some qualification of the advantages to be derived from the change, unless it be accompanied by especial foresight and wisdom. It will doubtless be an unavoidable necessity to modify existing general laws and to shape new ones to be enacted with reference to special and peculiar cases. It is quite possible to give a general form to the phraseology of every enactment intended to apply to a special case and to operate as a special grant of powers. The benefit

intended to be secured by the prohibition may thus be defeated. Even greater mischiefs than those which existed under the old system may be created. The parties interested in promoting a law intended to obtain special powers for a particular case cannot be relied on to guard against the possible operation of the general provision in the other cases to which it may be applied. The legislators who could measure the whole consequences of an act limited in its terms to a special instance, cannot foresee the possible cases to which a general law, adapted to the instance present to his mind, may be found capable of applying, or what operation it may have. There will, therefore, be great danger of vague, loose, and hasty legislation in contemplation of one object, but capable of working in numerous cases results neither foreseen nor intended. The new legislation called for by this provision should be framed with more than ordinary care.

Frauds and malversation by public officers.

It will be the first and most imperative of our duties to revise the laws which are intended to provide criminal punishment and civil remedies for frauds by public officers, and by persons acting in complicity with them. The condition of our existing statutes and of our unwritten law, as its provisions for such cases have been construed and declared by recent decisions of the court of final resort, disclose grave defects. The practical evils resulting from these defects are greatly increased by the recent frequency and magnitude of violations of official trust.

Imperfection of criminal laws.

The statutes punishing embezzlement are held not to apply to such offences when committed by public officers. The statutes relating to larcenies are deemed to be of questionable application to a fraudulent acquisition of public funds existing in the form of credits inscribed on the books of a bank, and known in the language of commerce as deposits. The statutes in regard to obtaining money or property by false pretences are not free from technical embarrassments in their application to public frauds. Without assenting to the conclusion that these statutes are wholly

unavailable in such cases, it cannot be doubted that they are inadequate, and unfit for the exigencies of the times, and that they abound in needless technical questions which tend to the defeat of public justice.

No illustration of these defects can be so impressive as certain facts of recent experience. A public officer, designated by statute of the State, and authorized, with two others, to audit the then existing liabilities against the County of New York, fraudulently made an audit, or certified to an audit not made, of fictitious claims to the amount of six millions of dollars, and instantly received a million and a half of the money paid on such audits, through a common agent between himself and the pretended owners of the claims. For this flagrant crime, accompanied by many circumstances of aggravation, the eminent counsel who represented the people deemed it prudent to seek convictions only for misdemeanors in neglect of official duty, the punishment for each of which is imprisonment in the penitentiary for a term not exceeding one year, and a fine not exceeding two hundred and fifty dollars. When we consider that a person who, under the temptation of pressing want, steals property of the value of over twenty-five dollars is liable to imprisonment in the State prison for a term of five years, and that the other offences against private property are punishable with corresponding severity, the inadequacy of the law applicable to great public delinquents, betraying the highest trusts and plundering the people on a grand scale, is revolting to all just notions of morality and justice.

I recommend the enactment of a statute which shall clearly embrace such offences, and impose penalties upon them proportionate to their moral turpitude and to the mischief which they inflict upon society. It can apply only to future cases; but it may be expected to do something toward preventing a recurrence of such evils. Recommendations.

The existing civil remedies applicable to such cases are no less inadequate. For the last three years the spectacle has been exhibited on the conspicuous theatre of our great metropolis

of fraudulent officials remaining in quiet possession and making unobstructed dispositions of great wealth which we are morally certain was derived from their spoliation of public trusts, notwithstanding legal proof of the most conclusive nature exists of their guilt. In the mean time, civil actions have been dragging their slow length along, as in ordinary cases of disputed rights, while the "law's delay" has been maintained by the use of the vast fund abstracted from the public, and no process has been found in our laws by which it could be attached and preserved pending the litigation, or its disposition interfered with before final judgment.

Civil remedies.

A Bill to extend to such cases the remedy of attachment as in case of foreign corporations, or non-resident, absconding, or concealed defendants, has been heretofore submitted to the Legislature. I trust that such a measure will be speedily adopted. I recommend further that preference be given to such cases in the courts, whoever may be the party plaintiff.

Recommendation.

A still more serious defect exists in our jurisprudence. Where a wrong is committed which affects the treasury of a city, county, town, or village, the officers who would be the proper plaintiffs in any suit for redress, or who possess exclusively the power to institute or conduct such suits, may be themselves the wrong-doers, or be in complicity with the wrong-doers. In every such case the remedy must, of course, be very much embarrassed, if not wholly unavailing. The unfaithful incumbents may be entitled to serve for a long term, or they may possess great facilities for gaining the favor of their successors. While the remedy is thus delayed — perhaps for years — the proofs may be lost; or the depredators may make away with their property and withdraw their persons from the reach of process; or they may, through the lapse of time, become discharged from liability by the Statute of Limitations. As the offence becomes stale, the public sentiment which inspires voluntary efforts of

A great defect in our jurisprudence.

patriotic citizens in behalf of the people to seek redress, is wearied and weakened. On the other hand, temptations are strengthened and developed into actual crimes by the prospect of impunity which grows out of tardiness and uncertainty in the remedial law.

Attempts to remedy that defect.

The frequent occurrence of malversation in local governing officials has stimulated ingenuity to devise some judicial remedy. At first it was conceived that the injured taxpayers or inhabitants might, in their own names, invoke judicial aid. An analogy was set up to the case of a private corporation in which a corporator, on the omission of the directors to sue, might bring an action in behalf of himself and his associates, making the corporate body a defendant. The idea received much favor from the courts in the judicial district which comprises the city of New York. But the Court of Appeals in Roosevelt *vs.* Draper, and in Doolittle *vs.* Supervisors of Broome County, decided that the individual taxpayer had no special interest distinct from that of the public which would enable him to sustain an action in person for the redress of a public wrong of the nature involved in those cases. In the former case the intimation was made that the true "remedial process against an abuse of administrative power tending to taxation is furnished by our elective system, or by a proceeding in behalf of the State;" in the latter, that "for wrongs against the public, the remedy, whether civil or criminal, is by a prosecution instituted by the State in its political character, or by some officer authorized by law to act in its behalf."

The whole reasoning of the Court proceeded upon this ground; nor does it seem to have been questioned by the counsel on either side. The remedy intimated in these decisions has been recognized as established law in Great Britain, from which we inherit our equity jurisprudence, by a series of great precedents. It has been applied to populous municipalities, like Liverpool, and to corporate funds derived from taxation and applicable to general municipal purposes. It is a natural

deduction from the historic origin and the expansive philosophy of the equity system, whose proud boast has ever been that it leaves no wrong without a remedy.

On the discovery in 1871 of the frauds committed by the governing officials of the municipality of New York, the Attorney-General, acting on these intimations of our own courts and on the English precedents, instituted actions against the parties inculpated by positive proofs. Within the last year the Court of Appeals, in the cases of The People *vs.* Tweed, Ingersoll, et al., and of The People *vs.* Fields, has decided that the State cannot maintain those actions. The result is at last arrived at that neither the taxpayer nor the State in his behalf can seek redress; that in all the long interval, nobody has been competent to sue or conduct a suit, except some corporation counsel who was an appointee of the accused parties. This is a state of our jurisprudence which calls for new legislation.

New legislation.

In choosing between the two expedients of vesting the right to sue in the individual taxpayer or in the State, it is obvious that the latter should be preferred. The existing statutes intended to confer some limited rights on the individual taxpayer are practically nugatory. The reasoning of the Court of Appeals, in the cases denying him the right under our customary jurisprudence or the common law, argues with cogency the inconveniences which might attend the possession of such a power by every member of so multitudinous a body. The wiser alternative is to vest the power in the people of the State, acting by their attorney-general. It will be analogous to the authority which exists in respect to private corporations and in cases of nuisances and of *quo warranto*, and will be in conformity to the safe methods and traditional usages of equity jurisprudence.

Local self-government.

The establishment of such a remedy for the injured taxpayer or citizen will not detract from, but will make possible, and will found on a durable basis, local self-government. Human society will struggle, like every-

thing that lives, to preserve its own existence. When abuses become intolerable, to escape them it will often surrender its dearest rights.

All the invasions of the rights of the people of the city of New York to choose their own rulers and to manage their own affairs — which have amounted to a practical denial of self-government for the last twenty years — have been ventured upon in the name of reform, under a public opinion created by abuses and wrongs of local administration that found no redress. When the injured taxpayer could discover no mode of removing a delinquent official, and no way of holding him to account in the courts, he assented to an appeal to the legislative power at Albany; and an Act was passed whereby one functionary was expelled, and by some device the substitute selected was put in office. Differing in politics as the city and State did, and with all the temptations to individual selfishness and ambition to grasp patronage and power, the great municipal trusts soon came to be the traffic of the lobbies. It is long since the people of the city of New York have elected any mayor who has had the appointment, after his election, of the important municipal officers. Under the charter of 1870, and again under the charter of 1873, the power of appointment was conferred on a mayor already in office. There has not been an election in many years in which the elective power of the people was effective to produce any practical results in respect to the heads of departments, in which the actual governing power really resides.

A new disposition of the great municipal trusts has been generally worked out by new legislation. The arrangements were made in secret. Public opinion had no opportunity to act in discussion, and no power to influence results. Inferior offices, contracts, and sometimes money were means of competition, from which those who could not use these weapons were excluded.

Whatever defects may sometimes have been visible in a system of local self-government under elections by the people,

they are infinitely less than the evils of such a system, which insures bad government of the city, and tends to corrupt the legislative bodies of the State. A popular election invokes publicity, discussion by the contending parties, opportunity for new party combinations, and all the methods in which public opinion works out results.

Official accountability a condition of municipal independence.

No part of the civic history of this State is more instructive than the recorded debates of the Convention of 1821 on the question of electing, by the voters of the counties, the sheriff, who is the executive arm of the State. It was thoughtfully considered by our foremost statesmen. Its solution embraced the two ideas, — the selection by the locality, and the removal for cause by the State. The Convention of 1846 carried its dispersion of the power of choosing local officers much farther on the same system. That system is to distinguish between the power of electing or appointing the officer and the power to hold him to account. It is, while dispersing the one to the localities, to reserve the other to the State, acting by its general representatives and as a unit, and to retain in the collective State a supervisory power of removal in addition to whatever other accountability may result to the voters or authorities of the locality from the power to change the officer at the expiration of his term, or from special provisions of law. The two ideas are not incompatible. On the contrary, each is the complement of the other. Such dispersion of the appointing power has become possible only because these devices have been invented to preserve accountability to the State.

The right of the State, by its general representatives, to remove, is capable of being made to destroy the local election or appointment; the right of the State to sue is not. It is also less in conflict with the local power of election and appointment. Official accountability is not complete if there is no remedy for official wrongs but removal; that remedy needs to be supplemented by accountability in the courts on the appeal of a taxpayer or citizen of the locality. If a right to

that appeal is denied, the appeal will continue to be made, on often recurring occasions, to the legislative power, and the system of the last twenty years will be perpetuated.

Municipal government.

The problem of municipal government is agitating the intellect of all civilized peoples. In our own State it is the more interesting and important because it involves the half of all our population, which lives in cities or large villages. The framework of the system which we should adopt must be intrenched in the fundamental law, and protected, by constitutional restrictions, from arbitrary and capricious changes by legislation. This problem failed of any solution in the recent amendments to the Constitution. It is worthy of long-continued thought and debate. Time and discussion will at last mature a safe and wise result.

The Erie Canal and the transportation problem.

The State of New York, not denying the general unfitness of Government to own, construct, or manage the works which afford the means of transportation, saw an exception in the situation and in the nature of the canals, which are trunk communications between the Hudson and the great inland seas of the North and West. They connect vast navigable public waters, and themselves assume something of a public character.

The natural pass of commerce.

The voyage from Europe to America, even if destined to Southern ports, is deflected by the ocean currents so as to pass closely by the gates of our commercial metropolis. That capacious harbor is open the whole year, is accessible in all prevailing winds, and is sheltered, safe, and tranquil. From it the smooth waters of the Hudson give transit to the lightest hull, carrying the largest cargo, which the skill of man has brought into use. The head of navigation on the Hudson touches the natural pass of commerce opened up in the geographical configuration of this continent, where the Alleghanies are cloven down to their base, and travel and traffic are allowed to flow across on a level and by the narrowest isthmus to the lake ports, which connect with all that great system of inland water

communication and interior commerce, the most remarkable in its character and extent and accessories that exists in any part of the globe.

The Northwest.

Tributary to the Western centres of lake commerce such as Chicago and Milwaukee, are vast areas of fertile soils, which stretch to and partly include the valley of the upper Mississippi. Open prairies easily brought into cultivation, fitted for the use of agricultural machinery, adapted to the cheap construction of railways, and peculiarly dependent on their use as a means of intercourse and traffic, have been opened to settlers at nominal prices. They have been rapidly filled by a young, intelligent, and energetic population, trained in the arts and industries of an older civilization, and applying them to natural advantages which have been found elsewhere only in conjunction with the social barbarism of an uninhabited wilderness. They are now covered with a network of railways which connect myriads of little centres with the lake ports and with the trunk railways that bring them into practical contiguity to our great Eastern centres of population, capital, commerce, and manufactures.

New York's liberal policy — the Erie Canal trust.

New York, without arrogating to itself an undue share in these achievements, may contemplate with proud satisfaction its contribution to results so magnificent. Important as are the advantages which have accrued to itself, it has not sought to monopolize the benefits of its policy. The price of such cereals and other products of agriculture as are exported in considerable quantities are mainly fixed by the competitions of the foreign markets, even for our own consumption. The cheapening of the cost of transit, therefore, chiefly profits the producer. This consideration illustrates how large and liberal, in the main, is the policy adopted by the State, — a policy which I had the satisfaction of advocating in 1846 and in 1867, — of treating these great works as a trust for the million, and not seeking to make revenue or profit for the sovereign out of the right of way. In consonance with the same policy was the action of the State in 1851 in per-

mitting the transit free of tolls upon a railway which it allowed to be constructed between the termini of the Erie Canal and along its bank. It had originally undertaken the construction and administration of the canal, in order to create a facile and cheap transportation demanded by the interests of the people, and not otherwise possible to be attained. It did not forget the motive for which it had acted, and remember only its selfish interests as a proprietor. It therefore, by an Act which anticipated the necessity afterward to arise by the construction of rival routes, repealed all restraints on the carriage of property, and opened to free competition every mode of transit, even in rivalry to its own works, for the products of the West and for the manufactures and merchandise of the East.

Not to be abandoned.

The Erie Canal remains an important and valuable instrument of transport, not only by its direct services, but also by its regulating power in competition with other methods of transportation. The State, so far as we can now foresee, ought to preserve it, and not contemplate its abandonment.

Duties of the State.

If the State accepts the view which commands it to abstain as a proprietor from making profit out of the canal, but to deal with it as a trust, it still has great duties to perform. It is bound, as a faithful trustee, to protect this great work, not only from a spoliation of its revenues and from maladministration, but also from empirical changes, proposed in the seductive form of specious improvements, that would destroy its usefulness while charging it with new incumbrances, and from an improvident tampering with its incomes that would dissipate its means of effecting real improvements. These are its ever-recurring and its greatest perils.

Lake and canal navigation cannot be assimilated.

The nine hundred and twenty-five miles of lake navigation from Chicago to Buffalo, and the four hundred and ninety-five miles of canal and river navigation from Buffalo to New York, and the three thousand miles

of ocean navigation from New York to the Old World, cannot be made homogeneous, or even assimilated; each is subject to physical conditions which are unchangeable, and to which the vehicle of transportation must be adapted.

Lake boats unfit as canal boats.

The rough and stormy Lakes require a strong vessel, made seaworthy by its deep keel, fully manned, and of a form intended for speed in an unlimited expanse of water. The canal admits of a light keel and a shape which will carry a larger proportional cargo; for the boat moves safely in a tranquil channel of water, closely confined by physical boundaries on the bottom and sides, and cannot but submit to a slow movement. The propeller of the Lakes tends to grow in dimensions. A recent one carries seventy thousand bushels of wheat, or two thousand one hundred tons. A barge to be towed by each propeller is a system now being tried with fair prospects of success. The lake craft of the average size carries less cargo in proportion to the vessel than the canal-boat; and it costs twice and a half or three times as much as the canal-boat per ton of capacity. If the canal were made large enough to pass the lake craft, the transporter could not afford to use the lake craft on the canal. It carries too little cargo; it is too costly. It would have to reduce its rate of motion from about eight miles per hour on the lake to less than three miles per hour, which is the highest aim of the canal-boats, that now make only $1\frac{42}{100}$ miles per hour. Such a vehicle of transport would not be adapted to the water channel it must move in, and would not be economical. Transshipment at Buffalo, with modern machinery, would cost little, compared with the loss incident to using an unfit and ill-adapted instrument.

To enlarge the Erie Canal to dimensions adapted to the movement of such a vessel, at the rate of less than three miles per hour, would be so inconvenient to the traffic that it would be easier and cheaper to construct an independent work. That would probably cost a principal sum, the annual interest on which would be greater than the entire amount now received

by the carrier for his services and by the State for its tolls on all the existing business. A shorter route would be likely to be preferred. The Hudson River, from Troy to deep water, would need a similar reconstruction.

Enlarged locks and unenlarged water-way.

A project often urged within the last ten years is the enlargement of the locks and other structures of the Erie Canal, without a proportionate enlargement of the water-way. That plan exhibits a singular union of injurious costliness and fatal parsimony. It is founded on the fallacy that the use of a large boat, without reference to its adaptation to the water-way in which it is to move, would be economical. It is supported by an estimate of the State Engineer in 1864 that the cost of transportation would be reduced one half. His opinion has been repeated on all occasions until the present time. But that estimate, when analyzed, is found to omit all the wages and support of the crew during the return trip and during the time occupied in loading and unloading, and to allow for the use of the boat about half its real cost. In other respects it was utterly unworthy of trust.

Economy from the best group of adaptations.

The truth is, the boat is but one part of the whole machine of transportation. Economy in the service depends upon getting the best adaptation of all the various parts, — the boat, the motive power, the canal with its structures and its water-way, the best group of adaptations which adjustments and compromises of each can work out and combine, and the resultant of the greatest economies which can be obtained in conjunction. A larger boat, in a water-way which now needs to be itself enlarged and improved to give a good transit to the present boat, would be an unmixed damage to the economy of the service, attained at immense cost.

Perfecting the canal the wise policy.

The Erie Canal was planned in view of the best science and experience then possessed. It has excellent adaptations, and is a superior instrument of transportation. It should not be fundamentally changed in

its character and conditions without great consideration. It should be perfected, and so made available to every practicable extent for facilitating and cheapening the exchanges of commodities between the East and the West.

Its capacity, its economy.

The two questions concerning it are, — first, its capacity to do an aggregate business during a given period; secondly, the economy per ton per mile of the transportation it affords. These questions are generally confounded with each other in all discussions; but they are completely distinct, and depend upon wholly different conditions.

Its capacity ample.

Capacity to accommodate an aggregate tonnage during a day, a month, or a season of navigation depends on the number of boats of the normal size which the locks are able to pass during the period. Boats can be multiplied indefinitely; the limit to their use is in the number to which the locks can give transit. The time occupied in a lockage is the test; but it is unnecessary to apply it, for the actual results of experience set at rest every doubt.

Of the seventy-two locks which intervene between the waters of Lake Erie and the waters of the Hudson, all but a few have been doubled for many years. In 1867, when the subject was discussed in the Constitutional Convention, thirteen remained single. For the first time, on the opening of navigation next spring, double locks will be brought into use throughout the entire canal; that will nearly double the capacity of the canal to make lockages. The largest delivery of the Erie Canal at tide-water was in 1862; in that year it amounted to 2,917,094 tons, in cargoes averaging one hundred and sixty-seven tons. The lockages both ways, including rafts which pass only one way, — at Alexander's, which is in the throat of the canal, three miles west of Schenectady, — was 34,977. In 1873 the deliveries were 2,585,355 tons, in cargoes averaging 213 tons, and the lockages were 24,960.

The theoretical capacity of the canal will be three or four times the largest tonnage it has ever reached. There is no

doubt it can conveniently and easily do double the business which has ever existed, even though the locks be not manned and worked with the highest efficiency. The subject of capacity may therefore be dismissed from this discussion.

The question, however, really worthy of our attention is how we can perfect the canal so as to reduce the cost per ton per mile of the transportation it affords. Quickening the movement of the boat increases the service it renders in a given period. It lessens every element in the cost of that service; it enlarges the number of tons carried in the given time; and by enlarging the divisor of the same expenses, it reduces the rate of cost per ton per mile. The economy in the transit of the boat must be made, not in the locks, but in the water-way. The seventy-two locks in the three hundred and forty-five miles between Buffalo and West Troy, if each takes five minutes, would occupy exactly six hours. In October, 1873, seventy-six boats were timed, and their average passage down, with average cargoes of two hundred and twenty-seven tons, was ten days, two hours, and forty-six minutes, or nearly two hundred and forty-three hours. If we double the time taken in the locks, the time occupied on the levels between them would still be over 95 per cent of the whole time of the voyage. It is clear, therefore, that the saving of time must be made in the 95 per cent, and not in the 5 per cent. Economy per ton per mile in the transportation, so far as it depends on the structure of the canal, is to be found in the relation which the water-way bears to the boat. The movement of the boat through water confined in an artificial channel, narrow and shallow, is, at best, very slow. The engineers in 1835 planned the Erie Canal and the boat with such relations to each other as to give the greatest economy of power and facility of transit. The boat has inclined to grow rather large and too square. The water-way was practically never excavated in every part to its proper dimensions. Time, the action of the elements, and neglect of administration, all tend to fill it by deposits.

Economy per ton per mile.

To be increased by perfecting water-way.

I may be excused for repeating here what I said in the Constitutional Convention eight years ago: —

"What the Erie Canal wants is more water in the prism — more water in the water-way. A great deal of it is not much more than six feet, and boats drag along over a little skim of water; whereas it ought to have a body of water larger and deeper even than was intended in the original project. Bring it up to seven feet, honest seven feet, and on all the levels, wherever you can, bottom it out; throw the excavation upon the banks; increase that seven feet toward eight feet, as you can do so progressively and economically. You may also take out the bench-walls."

Recommendations.

I recommend that such measures be taken as your wisdom, aided by such information as can be had from the proper administrative officers, may devise, to put in good condition and to improve the water-way of the Erie Canal; and that provision be made by law to enable the State Engineer, soon after navigation is opened, to measure the depth of water in the canal by cross-sections as often as every four rods of its length, and on the upper and lower mitre-sill of each lock.

Future inventions and economies.

Such a policy, if properly executed, will give a better and more economical transit to the boats if they continue to be towed by horses. It will also facilitate the use of steam canal-boats and the full realization of the advantages they may be expected to give as to economy of transportation. The obstacle to their use in 1867 was that the machinery, in its then state, displaced too much cargo to be economical, and was in other respects imperfect. The progress of invention since seems to promise more beneficial results. If the movement of the boat can be expedited from one and forty-two hundredths miles to three miles per hour, including the time consumed in the lockages, the improvement will be of great importance and value. The estimate of the able engineer of the Commission on Steam Canal Navigation is that the cost of carriage of a bushel of wheat from Buffalo to New York will be reduced from eight cents to four cents. It is

not to be supposed that the inventive genius applied to this interesting subject is exhausted; and if these results shall in any degree fail to be realized by the present experiments, we may nevertheless anticipate more complete success in the future.

Income and outgo.

It will be seen that on the Erie Canal alone the surplus of income over expenditures is about $37\frac{1}{2}$ per cent of the gross income. If the three other canals which are to be retained by the State as part of the system be included, the surplus is but $11\frac{2}{5}$ per cent.

Tolls.

The present tolls on wheat are $3\frac{1}{10}$ cents, and on corn 3 cents per bushel, from Buffalo to Troy,—345 miles. They were reduced in 1870,—those on wheat from $6\frac{2}{10}\frac{1}{0}$, or one half; and those on corn from $4\frac{8}{10}\frac{3}{0}$ to 3 cents, or about 38 per cent. One cent per bushel taken off the present tolls, and the same proportion on other articles, would annihilate nearly all the net income of the Erie Canal, considered alone, and would make a deficiency, in respect to the four canals retained, of half a million of dollars a year, if future expenditure should be the same as in these three years. The construction of the details of the toll-sheet belongs to the Canal Board, and adjustments from time to time may be necessary. Doubtless suggestions on that subject will always receive due consideration. But, in the present condition of things, to embark hastily and unadvisedly upon a general reduction of tolls might well be considered as improvident, even in respect to the canals themselves. To confiscate the surplus of one cent, or one half a cent per bushel, which alone gives the means of making the improvements expected to realize a reduction of four cents in the cost of transportation, would not seem a wise execution of the trust, even disregarding other considerations which cannot be wholly overlooked.

No rash innovations.

The question of altering the gates of the locks or otherwise lengthening the chambers may be safely deferred until we can be more sure of its utility. The fact that on the Delaware and Raritan Canal, which admits of

long boats, the proportions which exist in those now used on the Erie Canal are preferred, is against that alteration, as is also the judgment of excellent canal engineers. Holding ourselves ready to accept improvements which have been subjected to trial and scrutiny until they are practically assured of success, we ought to exercise the same caution in respect to rash or crude innovations which ordinarily governs men in private business.

Financial results of the last three years.

The financial results of the fiscal years ending Sept. 30, 1874, 1873, and 1872, for the Erie Canal, and for the Champlain, the Oswego, and the Cayuga and Seneca, are as follows: —

ERIE.

Year ending Sept. 30.	Income.	Ordinary Repairs.	Extraordinary Repairs.	Total Expenditure.
1872	$2,760,147.50	$1,025,079.09	$661,942.02	$1,687,021.11
1873	2,710,601.49	749,977.03	967,175.39	1,717,152.42
1874	2,672,787.22	701,340.81	973,548.96	1,674,889.77
	$8,143,536.21			$5,079,063.30
Income in excess of disbursements				$3,064,472.91
Average for each year				1,021,490.97

CHAMPLAIN.

1872	$150,644.28	$236,211.47	$251,871.61	$488,083.08
1873	153,417.86	234,677.37	562,782.95	797,460.32
1874	123,703.54	203,137.90	242,216.43	445,354.33
	$427,765.68			$1,730,897.73
Excess of expenditure over income				$1,303,132.05
Average for each year				434,377.35

OSWEGO.

1872	$90,796.57	$171,794.82	$141,673.94	$313,468.76
1873	88,428.13	93,938.81	78,880.58	172,819.39
1874	70,119.59	107,938.21	75,561.29	183,499.50
	$249,344.29			$669,787.65
Excess of expenditure over income				$420,443.36
Average for each year				140,147.78

CAYUGA AND SENECA.

Year ending Sept. 30.	Income.	Ordinary Repairs.	Extraordinary Repairs.	Total Expenditure.
1872	$17,882.58	$38,267.23	$26,319.00	$64,586.23
1873	22,481.11	27,143.48	6,921.06	34,064.54
1874	19,311.47	28,934.08	28,517.04	57,451.12
	$59,675.16			$156,101.89

Excess of expenditure over income	$96,426.73
Average for each year	32,142.24

RECAPITULATION FOR THREE YEARS.

Income over Expenditure.

Erie		$3,064,472.91

Excess of Expenditure over Income.

Champlain	$1,303,132.05	
Oswego	420,443.36	
Cayuga and Seneca	96,426.73	
		$1,820,002.14
		1,244,470.77
Each year		$414,823.59

The paying canals.

It will be seen that during the last three years the income of the Erie Canal, considered alone, has been $8,143,536.21, and its expenses $5,079,063.30, yielding a surplus of $3,064,472.91, or an average for each year of $1,021,490.97. The excess of expenditure over income of the three other canals which are to be retained by the State has been $1,820,002.14, or three fifths of the surplus produced by the Erie. Considering the four as a system collectively, the surplus has been $1,244,470.77, or an average for each year of $414,823.59.

The non-paying canals.

During the same three years the five other canals to which the constitutional amendment applies, have given an income of $119,864.45, or for each year of $39,954.81, against an expenditure of $1,596,499.74, or for each year of $532,166.59. They have consumed all the net income of the paying canals, and have charged the State with a loss of $232,164.52, or for each year $77,388.17. In addition to this annual loss, the whole burden of the sinking fund to pay the canal debt is thrown upon the State.

Increase income before discarding income.

A careful investigation whether the net incomes of the canals retained cannot be increased, ought to precede a surrender of what little now exists. Ordinary repairs should be scrutinized with a view to retrenching their cost and to obtaining the largest possible results from the outlay. Extraordinary repairs include much which so regularly recurs in different forms that they must be considered a part of the maintenance of the works. No doubt they also include improvements which are of the nature of new capital. These and all improvements should be governed by a plan and purpose leading to definite results; and, instead of scattering expenditures on imperfect constructions, should aim to complete and make available the specific parts undertaken. Unity of administration and of system, both in respect to repairs and improvements, should be established, even if only by the voluntary consultation and co-operation of officers having authority over separate portions of a single work. It is worthy of consideration whether any legislation can aid in securing the unity in this respect which existed under our former Constitution.

New York the trustee for the interests of all.

The State, hearing all parties interested in the use of the canals, will remember that itself, as an arbiter and trustee, must look equitably to the interests of all. This it will do in a wise, liberal, and just spirit. To the last degree possible, it will cheapen facilities to trade. It will aim to preserve for its metropolis its position as the carrier, merchant, and banker of the New World.

Chief function of the canal system—New York city.

Inevitable changes must be recognized as the results of modern inventions and improvements in the machinery of transportation. When water routes alone existed, products came to New York for distribution to points which are now more easily and cheaply reached directly by rail. Railroads, covering the country like a network, touch so many points that they are a more perfect and complete agency for the reception and distribution of produce than a water communication connecting a few principal points;

and where the transit from the producer to the consumer requires the use of the rail to reach the water, or after leaving the water, or both, the all-rail route will often be preferred. New routes will acquire the business which is naturally tributary to them, and take besides some portion of the general business. The main transportation of Western agricultural products is for local consumption in the East. What comes to us for our own consumption cannot be diverted; what goes for consumption elsewhere cannot be acquired. The exports of agricultural products to foreign countries are but a small part of the whole production. In those New York will easily continue to maintain her pre-eminence.

The Champlain and Oswego canals are, as well as the Erie, in some sense, trunk canals; and the Cayuga and Seneca Canal connects our interior lakes. It is a noteworthy fact that Mr. Flagg, who so long and honorably conducted the State finances when the Canal Department was a bureau in his office, always insisted that with the four canals now to be retained the system was complete. Those it is now proposed to abandon are not fruits of his policy.

Disposition of the non-paying canals.

The adoption of the constitutional amendment removing the prohibition against "selling, leasing, or otherwise disposing of" the canals owned by the State in respect to all except the Erie, the Oswego, the Champlain, and the Cayuga and Seneca canals, undoubtedly contemplates such action on your part as will disencumber the revenues of the canals retained by the State, and disembarrass the treasury of the State from the unproductive works in respect to which the prohibition is withdrawn. It cannot have been supposed possible to "sell or lease" those works on conditions which require the purchaser to maintain and operate them. "Otherwise to dispose of" them amounts to a practical abandonment.

Use as feeders.

Even thus to deal with them involves many important questions of a business character. Those portions of them which descend toward the Erie Canal act as feeders to supply water to that canal. The supply cannot be

safely diminished, and might be judiciously increased. The improvement of the water-way contemplated will call for more water. The consideration of what must be done to retain as feeders portions of these canals not hereafter to be maintained by the State for navigation, or what other provision for a supply of water shall be substituted, is important. To make the change contemplated by the amendment with as little harm as possible to private interests, and to consider and provide for cases of possible damage which may be caused by the works when falling into disuse, needs careful study of the facts of the situation. It is also to be ascertained what portion, if any, of the property of the State connected with these works can be wisely sold.

A special commission recommended.

The best suggestion which occurs to me on this subject is to impose the duty of considering and reporting on these questions upon a special commission consisting of four persons. In the meantime no expenditures should be made upon those works which are not strictly necessary in view of their probable future.

The interest of New York in the financial policy of the United States.

The State of New York receives nearly seven tenths of all the imports, and sends abroad nearly half of all the exports of the whole United States. In its commercial metropolis a much larger share of our dealings with foreign nations in securities and money is transacted, and as at a common mart, the exchanges are largely made between the people of the United States in domestic manufactures and products, and in public and corporate securities and stocks. More than one half of the revenues of the Federal Government are collected within its borders, and at least one fifth of all Federal taxation falls upon its citizens.

Since the Federal Government has assumed to provide a currency for the whole country directly by the issue of its own notes, or indirectly by bank-notes which are secured upon bonds of the United States, and in case of default by the issuer are to be paid, before resorting to the securities, by the United States; since it has incidentally absorbed the regulation of the business of banking; since it has largely increased its taxation,

and imposes that taxation in forms which affect the courses of industry and the application of capital and labor, — it is impossible to exclude these vast operations, and the administrative policy and the legislation connected with them, from a review of "the condition of the State" which it is the constitutional duty of the Governor to communicate, with such recommendations "as he shall judge expedient," "to the Legislature at every session."

Can more currency revive prosperity?

The illusion is too common that an additional issue of currency in legal tenders or bank-notes would alleviate the distress now felt in business, cause a general rise of prices, and revive a seeming if not a real prosperity. Thus many are tempted to desire or to acquiesce in a demand upon the Federal Government to put out new promises to pay, while it is yet in a long-continued default as to those heretofore made, and to do so after ten years of peace, while having no better excuse for its present default than lack of skill in applying its abundant resources to the restoration of the public faith.

The hope of benefits to any class from such an unsound policy would prove to be completely fallacious. It would prolong and intensify the evils sought to be alleviated. This conclusion is clear upon principle and in our own experience. In order distinctly to see its truth, it is only necessary to analyze that function in the business of society which is performed by the circulatory credits known as currency.

Currency but a part of circulating credits.

To economize the use of metallic money, which had become the common instrument of exchange, personal credit, in the form of book accounts, was introduced. For example, the farmer delivered to the country merchant his grain when ready for the market, and the merchant delivered his goods at the times when they were wanted by the farmer for consumption. Each delivery was entered in a running account until a balance was struck; and even then the settlement generally took place without the intervention of money, which neither party had the capital to own for each transaction, or to pay the ultimate balance. Next came the

note of hand, and when the transaction was between parties doing business at different places, drafts and bills of exchange. At last the most refined tool of commerce became perfected. The bank-note — promising to pay coin on demand to bearer, in an even and convenient amount, engraved and authenticated, when issued by an institution or individual of established general credit — was voluntarily accepted by everybody in place of coin. It is the currency used in payment by those who do not keep bank accounts, and in petty transactions by those who do keep bank accounts. A credit inscribed on the books of the bank, known in the language of commerce as a deposit, and transferred by check, is the preferred medium of payment in all save petty transactions by those who keep bank accounts. It is preferred because a check may represent a large and uneven amount, which in notes would be inconvenient in the counting, handling, and custody; and a check payable to order is safer, and is itself an evidence of the payment. In dense communities, where the bank is near the customers, checks are mostly used. In sparse communities, where the bank is remote from the dealers and holders, bank-notes are mostly used.

Bank-notes and checks the same in effect and nature.

These two tools of trade and mediums of payment are, in their general functions, identical. Their real nature is that they are a provision for expected payments and a reserve for possible payments. On deposits, the holder submits to a partial or total loss of interest, for some banks allow interest at low rates on deposits; on bank-notes the holder submits to a total loss of interest. To each holder the motive is ever present, to reduce his non-interest bearing reserve to the lowest necessary amount, by investing it if it be his own, or by returning it if it be borrowed.

Their amount varied by people's wants, if payable in coin.

If the currency be redeemable, the wants of the community, and not the wishes of the banks, will determine the amount which will remain outstanding. All that government ought to do toward fixing that amount is to provide methods to enforce payment by the

issuers of such notes as the holders, not wishing to use, return to the issuers for redemption.

It is true that in times of speculation the currency increases. Transactions become more numerous. Higher prices cause the same transactions to absorb more of the medium of payment. There is greater disposition to provide for contemplated or possible operations. There is less care to economize the loss of interest on the amount kept on hand. In times of depression, all these conditions are reversed. During the long period of downward tendencies, from 1837 to 1842, the currency fell of itself to about one half its amount at the beginning of the period.

Amount fluctuates with the times.

In the ordinary and regular relations between a redeemable currency and prices, the fluctuations in the currency follow, instead of preceding, changes in general prices. The notes in the hands of the public, less the reserve kept for their redemption, form a part of the loan fund of a bank; but that amount is not capable of being increased at the will of the bank until a speculation has arisen and higher prices or more transactions have resulted. Even then the increase of currency merely provides for the prior increase of prices or of transactions. It may be said that the increase of currency is a condition without which the increase of prices or transactions could not happen; but that is not true, unless it be shown that no other tool of credit than bank-notes could be used. In cases where a bank originates a speculation by enlarging its loans, it must do so at the expense of its customary reserve. It is only by artificial changes in the currency — generally made by Government — that the currency itself becomes the primal source of speculation. In fact it nearly always happens that speculative purchases are originally made on personal credit, evidenced by open accounts or notes of hand. The banks are applied to only at the expiration of the original credit; and then what is wanted is not a continued use of bank-notes, but a loan of capital. Bank-notes are one of the wheels in the machinery of credit. They have

The relation of currency to prices.

no quality peculiar in its action on prices or different in its action on prices from any other part of the machinery of credit. The currency, at its present amount of bank-notes and legal tenders, is less than the deposits, and is but a small fraction of the whole existing mass of credits, including book accounts, notes of hand, drafts, and bills of exchange; and new forms of credit machinery are capable of being invented indefinitely, as when, in September, 1873, the New York Associated Banks created a currency of twenty millions of certificates, to be used in the exchanges between themselves. It is idle to pronounce the machinery of credit a maniac, dangerous to the community, and then to put only its little finger in a strait-jacket.

Currency only small part of circulatory credits.

The experiment of regulating the note circulation alone has been completely tried in Great Britain. In 1844, when, on the re-charter of the Bank of England, the bank-note circulation of that country was subjected to rules which were supposed to make it fluctuate exactly as if it were coin, it was considered by all but a few great thinkers that there would ever after be stability of prices and stability of business. But in 1847, in 1857, and in 1866 commercial revulsions of undiminished severity demonstrated the fallacy of these hopes and of the system on which they were founded. While the note circulation has ever since been confined by law to a nearly constant amount, the deposit circulation has increased manifold, and the vicissitudes of credit are as violent as ever. It is evident that whenever a foreign demand for coin arises, not caused by domestic over-trading, the system creates an artificial scarcity of an important instrument of commerce, and subjects all business to an unnecessary perturbation, — that whenever a panic destroys the credit of inferior dealers, and the interposition of the highest credit is called for to supply the vacuum and revive confidence, — the system breaks down, and the law limiting the issues of bank-notes is suspended, with the approval of the

Experience of England.

ministry and with a promise to appeal to Parliament for an act of indemnity.

The depreciation of a currency not convertible into coin represents the interest and risk, as estimated by the judgment of investors, on a loan payable at the will of the Government, without interest, subject to such temporary fluctuations as are induced by the variations in the supply and demand of coin in which that loan is ultimately payable. There is no doubt that the issue of legal tenders during the civil war hastened and greatly increased that inflation of prices which naturally resulted from the increased consumption and the waste resulting from military operations, and from the diminished production occasioned by so large a withdrawal of workers from their ordinary industries. It is the nature of credit to be voluntary; it is founded on confidence. Credit on compulsion is a solecism. Therefore a forced loan of capital from all existing private creditors cannot but be costly.

Why and how inconvertible currency depreciates,

Thus inflating prices.

It was made, in this instance, on a security which bore no interest, and interest on which could only be represented in discount from its par value. It gave to the lender an agreement to pay, which, being instantly due on demand, started in its career a broken and dishonored promise. Every successive holder was left to conjecture when it would be redeemed by the issuer, how far it might be absorbed in the Treasury receipts, whether it could still be paid out to some private creditor, and at what loss it could be passed away in new purchases on a market advancing rapidly and irregularly. Everybody was advised that the Federal Government — unwisely distrusting the intelligence and patriotism of the people — shrank from exercising its borrowing power, supplemented by its taxing power, and instead of resorting at once to the whole capital of the country capable of being loaned, which forms a vast fund perhaps thirty or forty times as large as the then existing currency, it chose to begin by debasing that comparatively insignificant part of circulating

Legal-tender financing.

credits, creating fictitious prices for the commodities and services for which it was next to exchange its bonds, in an expenditure ten times as large as the whole amount of the legal tenders it ventured to put afloat. No man could know how often or how much of legal tenders might be issued, under possible exigencies of the future. It could not be wholly forgotten that such issues, made by our ancestors to sustain the victorious war for national independence, were never redeemed, while the public loans made for the same purposes were all paid. It was remembered that history affords other warning examples to the same effect. These elements of distrust were needlessly invoked. But the system stopped short of the logical completeness of the expedients of the French Convention in 1793. While it compelled the existing private creditor, or anybody who should grant a new credit, to accept payment in legal tenders, it did not assume to regulate the prices of commodities. The seller, therefore, gradually learned to represent the depreciation of the currency in the price of the article he exchanged for it. As compared with gold, the currency, during all the last year of the war, was depreciated to between forty and fifty cents on the dollar, touching at its lowest point thirty-five cents on the dollar.

How it raised prices by provoking speculation,

It was not alone by the direct effect of the depreciation of the currency that prices were acted upon; speculation was engendered. Political economy takes little account of the emotional and imaginative nature of man. In long periods, with numerous instances, the average, deduced as a law, may perhaps discard that element; but in a particular instance or at a particular time it is often very potent, and must be estimated in any calculation which aims at accuracy. After a period of rest, when the disposition to activity begins to revive, a slight circumstance often excites a speculation that becomes general. The opening of a new market, an apprehended deficiency in the supply of a commodity, any one of a thousand circumstances may, in a certain state of the public mind, be a spark to kindle a blaze of speculation through-

out the commercial world. How much more, then, might it have been expected that such a Governmental policy would inspire and inflame the spirit of speculation! The effect was greatest during the process of a new issue of currency, or while it was anticipated; after the issue was completed, there was generally a subsidence or a reaction.

The Government consumption during the war was mostly of our domestic products. As soon as the channels of traffic could be adapted to the new points of consumption and the new classes of consumers, there was no more difficulty in the transfer of these products from producers to consumers than in the ordinary operations of commerce during peace.

And needlessly doubled the burden of the war.

Governments, in times of public danger, cannot be expected always to adhere to the maxims of economical science; the few who would firmly trust to the wisest policy will often be overborne by the advocates of popular expedients dictated by general alarm. If the Federal Government had paid out Treasury notes, not made a legal tender, in its own transactions whenever it was convenient, and redeemed them by the proceeds of loans and taxes on their presentation at a central point of commerce, and meanwhile had borrowed at the market rates for its bonds, secured by ample sinking funds founded on taxation, and had supplemented such loans by all necessary taxes, the sacrifice would not have been half that required by the false system adopted, — perhaps the cost of the war would not have been half what it became.

This analysis of the process by which the changes in the currency operated to produce the effect on prices witnessed by the people is necessary in order intelligently to discuss the problem now pressed upon us; for the fallacy lurks in many minds that the quantity of the currency, even when it has become stationary and quiescent, creates by its direct action a state of prices proportionate to that in quantity. But this fallacy is confuted by our own experience. The premium on gold fell from one hundred and eighty-five in July, 1864, to

twenty-nine in May, 1865; or rather, the currency rose from thirty-five cents to seventy-seven cents in gold value, while the amount of the currency remained undiminished. The quantity of the currency in the hands of the public — taking the aggregate of the legal tenders and the bank-notes, and excluding all of both which are held by the Treasury or by the banks — is now larger than at any former period. The existence of such a quantity has not arrested the tendency to a general fall of prices. The present inconveniences in business which it is proposed to remedy by a new issue of currency have originated and gone on to their maturity while the currency was being distended to its greatest volume.

Relation of the quantity of currency to the range of prices.

An excess beyond what is capable of being used for the business of society is now, for the first time, distinctly indicated. The movement of the crops in the last autumn — which requires something like one tenth addition to the ordinary amount — created no stringency. The banks have voluntarily withdrawn some millions of their circulation. It is probable that the amount capable of being absorbed by the business of the country will continue to fall for a long period.

Excess of currency, yet falling prices.

In such a condition of business, of credit, and of the public temper, a new issue of currency would not cause a rise of prices unless it were so excessive as to occasion speculative depreciation or distrust of ultimate redemption. It could not re-animate the dead corpse of exhausted speculation. A period of quiescence must ordinarily precede a renewal of the spirit of adventurous enterprise.

When inflation cannot inflate.

The distress now felt is incident to the continued fall of values, which is the descending part of the cycle through which they must pass after being forced up to an unnatural elevation. The want felt is a want of capital which the party does not own and has not the credit to borrow, — not a lack of currency. It is caused by investments in enterprises which have turned out to be wholly or partially

Distress from falling values and lacking capital.

bad, or which give slower returns than were anticipated; by too much conversion of circulating capital into fixed capital; by excessive undertakings or engagements, induced by a reliance on a credit that was transient. In a period of falling prices, good property becomes less convertible; it loses its circulatory quality; it almost ceases to be a resource to obtain money.

How distress cannot be cured.

These inconveniences would not be removed if the Government should put out legal tenders and take in a corresponding amount of bonds, or if a bank should deposit bonds and receive notes in exchange. Still the individual distressed for the want of capital would have no additional means to buy or borrow these new issues, which the new owner would obtain only by paying for them. A diminution of the Government bonds outstanding is a condition of the increase of legal tenders or bank-notes. If an embarrassed person could obtain the Government bonds surrendered or deposited, he would be as much relieved by his power to dispose of them as he would by a power to dispose of the legal tenders or bank-notes. His difficulty is that he is equally unable to obtain either; he has not the means to buy or the credit to borrow them. What he wants is something to make his bad investments good, his slow investments current; something to make his property convertible, to impart to it a circulating quality, — as when there is a general rise of values under a speculative excitement, and everybody is disposed to buy, and everything finds a ready market. He wants something to create in others a disposition to buy, in order that he may be able to sell. This is what, in the present state of things, an increase of the currency will not do. It would not act mechanically on prices. It does not operate by physical means. It simply influences the minds of men. It induces them to buy, and, in the effort to do so, they bid up prices. It is only when the minds of men are disposed to receive an impulse toward buying, that such an effect is produced. When speculators go into the market to influence others to buy, in order that they may

Increase of currency cannot cure distress.

sell, the conference usually ends in a fall. Even when speculators go into the market to sell on an event expected to cause a rise, the result is commonly a fall. Everybody cannot get out at once at the expense of others.

Changing forms and varying volume of circulatory credits.

The amount of currency required by the needs of business is not to be decided by former experience. There is no doubt that on the first issue of legal tenders they were largely substituted for other forms of credit. A single case will illustrate. The sudden rise in prices enabled the farmer to become the owner of the floating capital on which his next year's dealings with the country merchants were to be carried on. The habits of business change to adapt themselves to new conditions. It is possible that the Government might cautiously follow the tendencies of trade, and retire each clearly ascertained surplus, without doing any harm; but a withdrawal of any considerable portion of the amount required at the season of the year which creates the largest demand would produce serious and unnecessary distress. The adoption of a system which should threaten such a result would be very mischievous. The Federal Government is bound to redeem every portion of its issues which the public do not wish to use. Having assumed to monopolize the supply of currency and enacted exclusions against everybody else, it is bound to furnish all which the wants of business require. The case is as if the Government should undertake to monopolize the supply of lake-propellers or canal-boats to bring grain to market. If it should not furnish enough, the derangement of business and the distress of producers and consumers would be intolerable. While securing redemption, the Government should organize a system which passively allows the volume of circulating credits to ebb and flow according to the ever-changing wants of business; it should imitate as closely as possible the natural laws of trade which it had superseded by artificial contrivances.

The ability of the Federal Government to resume specie payments is thus simply a question of its command of resources

to pay such portions of the circulating credits it has issued as the public, not wishing to use, may return upon it for redemption. The amount to be paid cannot be considered large, in comparison with its financial operations. It has the taxing power, and by reducing its expenditure could accumulate an adequate surplus. It has the borrowing power and good credit. It can make permanent loans and pay the Treasury notes which are returned for redemption; it can convert them or fund them into interest-bearing securities. In that case they would cease to be currency, and would take their place among investments like national, State, municipal, railroad, or other corporate bonds, or any of the numerous forms of moneyed securities, of which many thousand millions are held in our country. The circulatory quality, in securities of equal general credit, is chiefly a question of the rate of interest they bear. The amount of coin necessary for resumption is, — first, an adequate reserve to meet the demand for exportation, for which the Treasury would become the universal reservoir; and second, a surplus sufficient fully to assure the people that the Treasury supply would not be exhausted. The power to command coin as the owner of foreign bills of exchange, or in other forms, would to a large extent be equivalent to possessing coin. Beyond such an amount of coin, the question is simply a question of capital.

Easy conditions of resuming specie payments.

The exact time of actual resumption, the process, the specific measures, the discreet preparations, — these are business questions to be dealt with in view of the state of trade and of credit operations in our own country, the course of foreign commerce and the condition of the exchanges with other nations, the currents of the precious metals, and the stocks from which a supply would flow without undue disturbance of the markets of other countries. These are matters of detail, to be studied on the facts and figures; they belong to the domain of practical administrative statesmanship.

It is quite clear that the problem ought to be worked out without costing the country anything like such disturbance

in its business and industries as the operations of the Federal Government during the last ten years have repeatedly created. The natural causes which affect trade may be foreseen, and all dealers can calculate them with equal advantages in everything except their own differences in intelligence and judgment. But the action of an official, conducting the largest financial operations in the country, and exercising dominion over the circulatory credits that are part of the machinery by which the mass of private transactions are carried on, cannot but tend to create in all industries uncertainty, confusion, and miscalculation.

Resumption less costly than present impolicy.

It was said, after the revulsion of 1837, that the barometer of the money market of America was hanging in the parlor of the Bank of England. The barometer which hangs in the Treasury Department at Washington does not merely indicate conditions and changes of the financial atmosphere, it also creates them. Its stormy vicissitudes harass the business of the whole country.

How present impolicy harasses all business men.

The partial cessation of productive industries and the partial want of employment which now exist are chiefly produced by the fear of the employers that if they carry on their works they may produce at a loss. The abstinence from purchase by all those classes of dealers who buy and get up stocks to provide for future consumption is chiefly caused by the fear of a further decline of prices. Under these apprehensions, the demand is much less than the ordinary consumption. The instant manufacturers or merchants are convinced that prices have reached the bottom, even for the period of an ordinary business operation, they will begin to resume their function in the economy of trade; the wheels of our complex industries will move, workmen will find employment, and, with revived confidence in the future, prosperity will be renewed in its sources. Nothing could be more unwise, more mischievous in its ultimate results, than to interrupt the healing process of Nature by expedients which will fail of affording any real relief, and will be certain to accumulate new materials for another catastrophe.

It has seemed to me fit that on this occasion the opinions of the great commonwealth we represent, which is so largely interested in these questions, should be declared on the side of sound finance, public integrity, and national honor; and in making this communication the medium of an authentic expression on the subject, I follow the example on similar occasions of several of the most illustrious of my predecessors.

Results during ten years of peace.

It is now almost ten years since the civil war ceased. That period ought to have sufficed to renew our productive industries, to repair the wastes of our accumulated capital, and to restore to our people a sound and durable prosperity; but an indispensable condition of such results was energy, skill, and economy in production, and frugality in public and private consumption.

Misused powers of Federal Government.

The Federal Government has all the while been the greatest single power in the country to influence results, not only by its own vast fiscal operations, its dominion over the currency and the business of banking, and the effect of its transactions on investments of capital and on the temporary conditions of the money market, but also by the ascendency it acquired during a period of public danger over public opinion and over the conduct of individuals. It is to be deplored that this great capacity for controlling action and for leadership has not conducted us to better results. The period has been characterized by unsound public finance; an uncertain policy in respect to the currency; a series of speculative excitements tending to unproductive enterprises and unremunerative investments of capital, and terminating in distressing reactions in credit and business; a want of efficiency and economy in production; extravagance in public and private expenditure; enormous taxation and complicated systems of revenue which have increased the cost and wasted the fruits of that taxation, and rendered capital and labor less productive; and frequent spoliation of private and public trusts.

Governments too costly.

In the decade beginning July 1, 1865, the people will have paid in taxes, computed in currency, seven thousand millions of dollars. Three fifths were for the use of the Federal Government, and two fifths for the State and municipal governments. It is doubtless true that some portions of the municipal expenditures were for objects not strictly governmental; but it cannot be questioned that much too large a portion of the whole net earnings of industry and of the whole net income of society is taken for the purpose of carrying on government in this country. The burden could more easily be borne when values were high and were ascending. As they recede toward their former level, the taxes consume a larger quantity of the products which have to be sold in order to pay them; they weigh with a constantly increasing severity upon all business and upon all classes; they shrivel up more and more the earnings of labor. This condition of things ought to admonish us in our respective spheres to be as abstinent as possible in appropriations for public expenditures. If the cost of government in our country were reduced, as it ought to be, one third, it would still be larger than a few years ago, taking account of the prices of the products which, in order to pay that cost, we are compelled to convert into money.

Taxation too burdensome. — The prostration of the South.

The people are less able to bear such taxation by reason of the want of efficiency and economy in production and the want of frugality in consumption, generated by the causes already indicated, and also by reason of the failure completely to renew the productive energies and activities of the States of the South, which furnish about half of the exportable commodities of the country other than specie, which are large consumers of our manufactures and productions, and which make us their carriers, merchants, and bankers in all their domestic and foreign transactions.

It has been proudly ascribed to the humanity of our age that, since the surrender at Appomattox, not one life has been sacrificed to the policy of the victorious Government. It is to

be wished that we were equally free from the criticism that the retribution visited upon our former adversaries merely conforms to the higher modern estimate of property, as compared with life; that, exercising a moral coercion invigorated by a standing menace of military force, we have held those communities bound in withes, to be plundered by rulers destitute of support in their public opinion, and without title to our own respect or trust.

Final acceptance of amendments to Federal Constitution.

Such has been our course, after and in spite of the fact that these our kindred in a common ancestry, a common heritage, and a common future, had joined at national conventions in the nomination of candidates and in the declaration of principles and purposes which form an authentic acceptance of the results of the war embodied in the last three amendments to the organic law of the Federal Union, and that they had, by the suffrages of all their voters at the last national election, completed the proof that now they only seek to share with us and to maintain the common rights of American local self-government in a fraternal union under the old flag with "one Constitution and one destiny." There should be no misunderstanding as to this position of our Southern brethren, or of any portion of our fellow-citizens. The questions settled by the war are never to be reopened.

The adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Federal Constitution closed one great era in our politics; it marked the end forever of the system of human slavery and of the struggles that grew out of that system. These amendments have been conclusively adopted, and they have been accepted in good faith by all political organizations and the people of all sections. They close the chapter; they are and must be final; all parties hereafter must accept and stand upon them; and henceforth our politics are to turn upon questions of the present and the future, not upon those of the settled and final past.

The nobler motives of humanity concur with our interests in making us hail with heartfelt congratulations a real and

durable peace between populations unnaturally estranged. The time is ripe to discard all memories of buried strifes, except as a warning against their renewal; to join all together to build anew the solid foundations of American self-government. For nearly a generation the controversies which led to fratricidal conflict have drawn away the attention of the people from the questions of administration, which involve every interest and duty of good government. The culture, the training, and the practice of our people in the ordinary conduct of public affairs have been falling into disuse. Meanwhile the primitive simplicity of institutions and of society in which government was little felt and could be neglected with comparative impunity, has been passing away. If public necessities must wring so much from the earnings of individuals, taxation must become scientific. In our new condition all the problems of administration have become more difficult. They call for more intellect and more knowledge of the experience of other countries. They need to become the engrossing theme of the public thought in the discussions of the Press and in the competition of parties, which is the process of free institutions. The people must once more give their minds to questions that concern the ordinary conduct of government, if they would have our country to start afresh in a career of prosperity and renown.

The people must again attend to public affairs.

NOTE.

On the first day of October last, eighty-one banks were doing business under the laws of this State. During the fiscal year then ended, five banks were organized, and four were closed, one of which failed. Of the five banks created, three were organized, with less than $100,000 of capital each, under Chapter 126 of the Laws of 1874. Banks.

Circulating notes to the amount of $6,368 were destroyed by the Bank Department during the year. Sixty-seven banks were credited with lost circulation to the amount, in all, of $285,559, the time for redeeming the same after the usual legal notice having expired. The amount of circulation outstanding, including that of incorporated banks, banking associations, and individual bankers, was, on the 1st of October last, $1,105,189.50. Of this amount, the sum of $367,438 was secured by deposits of cash, stocks, or bonds and mortgages. The residue, $737,751.50, is not secured, it having been issued prior to the passage of the general banking law. Steps have been taken by twelve banks for the fiscal redemption of $160,301 of these unsecured notes, in accordance with the provisions of Chapter 585 of the Laws of 1873.

One hundred and fifty-six savings-banks (two of which were closing) were reported to the Bank Department on the first day of July last. Their assets, in the aggregate, amounted to $316,122,790, having increased during the year then ended $1,367,020. The increase in assets during the first six months of 1874 was $8,533,060. The number of persons having deposits in these institutions was, according to the number of open accounts Jan. 1, 1874, 839,472, — being an increase of 16,830 during the year. Savings-banks.

On the first day of July last, twelve trust, loan, and indemnity companies reported to the Bank Department, under Chapter 324 of the Laws of 1874. The aggregate of capital paid in, as shown by their reports, Trust, loan, and indemnity companies.

was $11,752,040, and the amount due to their depositors was $38,479,764.

Insurance Department.

The number of insurance companies subject to the supervision of the Insurance Department, on the first day of December, 1874, was 282, as follows: —

New York joint stock fire insurance companies	102
New York mutual fire insurance companies	8
New York marine insurance companies	9
New York life insurance companies	26
New York Plate Glass Insurance Company	1
Fire insurance companies of other States	87
Marine insurance companies of other States	1
Life insurance companies of other States	27
Casualty insurance companies of other States	4
Canadian fire insurance companies	3
Foreign fire insurance companies	11
Foreign marine insurance companies	3
Total	282

The total amount of stocks and mortgages held by the Insurance Department for the protection of policy-holders of life and casualty insurance companies of this State, and of foreign insurance companies doing business within it, was $10,404,593, as follows: —

For protection of policy-holders generally, in life insurance companies of this State	$3,689,891.00
For protection of registered policy-holders exclusively	3,250,842.00
For protection of casualty policy-holders exclusively	1,000.00
For protection of plate-glass policy-holders exclusively	50,000.00
For protection of fire policy-holders in insurance companies of other States	40,000.00
For protection of fire policy-holders in insurance companies of Canada	600,120.00
For protection of fire policy-holders in foreign insurance companies	2,473,100.00
For protection of life policy-holders in foreign insurance companies	300,000.00
Total deposit	$10,404,953.00

Quarantine.

During the past year fifty-seven vessels arrived at the port of New York in which, during the passage or while in port, sickness had occurred, rendering them subject to quarantine detention. Eight vessels had eleven cases of small-pox on board, from which 3,228 persons had been exposed to the disease; 121 cases of yellow fever occurred on 44 vessels bound for New York, and twelve patients with this disease reached the port and were cared for at the Dix Island Hospital, of whom two died; and five cases of ship-fever were removed by the health-officer to the hospital. No cases of cholera occurred in the port; but several vessels arrived from ports infected with this disease, on three of which, coming from India, deaths from cholera occurred during the passage. No new disease called for any action by the health-officer.

During the year an epidemic of malignant yellow fever raged in Havana with unprecedented violence, and prevailed in Rio de Janeiro and in twelve other South American and West Indian ports, and also in Pensacola and some other Southern ports of the United States having extensive and direct communication with New York. In Havana the deaths from yellow fever reached the enormous ratio of 80 per cent of the persons attacked; and in some cases, vessels lying in that harbor during the summer lost all their crews except one or two. It is worthy of notice that while in previous years nearly nine tenths of all cases of yellow fever came from the port of Havana, so small a number reached here during the present year. This result, in the opinion of the health-officer, is largely due to the sanitary precautions taken by the officers of the vessels, most of whom, being connected with regular lines, are becoming familiar with the quarantine regulations of the port and with the rigid, though reasonable, restrictions to which vessels having persons suffering from infectious diseases on board are subjected.

During the quarantine season 1,135 vessels arrived at quarantine from suspected ports; of these 236 were from ports known to be infected, and were detained, and 68 were required to discharge their cargoes on lighters in the stream before going to the city.

Emigration.

The following table shows the statistics of emigration for the last fifteen years: —

Years.	Commutation Fee.	Aliens arrived.	Number of Emigrants cared for on Ward's Island.	Total cash receipts.	Total cash disbursements.	Amount paid for Real Estate and Buildings, included in total cash disbursements.	Amount paid to Counties and Institutions of the State, included in total cash disbursements.
1860	$2.00	105,162	4,729	$289,467.92	$217,717.53	. . . . .	$58,869.08
1861	"	65,529	5,079	175,434.56	178,401.77	. . . . .	19,855.93
1862	"	76,306	3,247	174,454.29	138,524.56	. . . . .	16,016.06
1863	"	156,844	4,911	341,027.00	168,155.71	. . . . .	15,792.22
1864	"	182,916	7,363	420,366.17	373,763.39	$132,450.00	19,349.71
1865	"	196,352	7,425	471,034.85	447,580.20	199,559.67	14,320.74
1866	"	233,418	10,306	532,048.20	545,983.21	193,937.06	52,940.24
1867	2.50	242,731	13,237	583,154.40	538,577.22	133,695.17	33,945.87
1868	"	213,686	14,250	577,349.36	662,958.12	125,769.74	†101,737.20
1869	"	258,989	13,911	695,499.59	606,158.58	96,852.13	48,846.66
1870	"	212,170	16,601	566,119.26	605,544.24	54,784.98	51,681.15
1871	1.50	229,639	14,369	421,957.40	605,904.17	96,419.47	39,829.58
1872	"	294,581	15,818	457,011.70	590,793.78	129,765.07	51,556.81
1873	"	266,818	12,942	415,063.28	466,108.22	61,188.46	32,678.24
*1874	"	135,323	6,300	214,631.34	299,035.14	22,129.45	. . . . .
Totals		2,870,464	150,488	$6,334,619.32	$6,445,205.84	$1,246,551.20	$557,419.49

The indebtedness of the Board is as follows: —

Due the Equitable Life Assurance Society, amount borrowed on bond and mortgage of the lands at Ward's Island		$100,000.00
Due the counties and charitable institutions of the State for the care and support of emigrants during the past one and one half years		75,000.00
Due for current expenses at Castle Garden		16,000.00
Estimated expenses of the Castle Garden and Ward's Island establishments, for the month of December, including $10,000 due for coal . . .	$30,000.00	
Less cash on hand and estimated receipts	20,000.00	10,000.00
Total estimated indebtedness Dec. 31, 1874 . . .		$201,000.00

* For eleven months. † This sum included back claims.

The number of emigrants at present cared for at Castle Garden and Ward's Island is 1,041, and in the counties about nine hundred. During the months of January and February, the number to be cared for at Ward's Island will increase to about two thousand and in the counties to more than twelve hundred. On the 1st of January next the commissioners will practically be without funds to care for these persons. The expenses of the Ward's Island and Castle Garden institutions will, during the months of January and February, be about $25,000 per month, while the receipts will not exceed $5,000 per month.

Common schools.

The statistics of the common schools for the year ending Sept. 30, 1874, are as follows: —

Total receipts, including balance on hand September 30, 1873	$11,944,023.38
Total expenditures	10,779,779.61
Amount paid for teachers' wages	7,559,090.59
Amount paid for school-houses, repairs, furniture, etc.	1,721,282.64
Estimated value of school-houses and sites	28,714,738.00
Total number of school-houses	11,775
Number of school districts, exclusive of cities	11,299
" " teachers employed at the same time for the full legal term of school	18,554
" " teachers employed during any portion of the year	29,683
" " children attending Public Schools	1,039,097
" " persons attending Normal Schools	6,568
" " children of school age in Private Schools	138,610
" " volumes in School District Libraries	835,882
" " persons in the State between 5 and 21 years of age	1,591,874

Colleges and academies.

The condition of the colleges and academies, subject to the visitation of the Regents of the University, is very satisfactory. There are within the State twenty-two literary colleges, ten medical colleges, and two hundred and forty academies and academical departments of

union schools. With several of the colleges included in this enumeration are connected special schools of law, of medicine, and of other branches of science. By the wise liberality of individual citizens, the endowments and appliances of several of these institutions have during the last year been largely increased and their means of usefulness greatly extended. The number of scholars in attendance upon the academies has increased, and the standard of scholarship has upon the whole considerably advanced. These institutions, while they prepare students for admission to the colleges, are also designed to fit another class for immediate entrance upon the practical duties of life; and thus complementing the work of the common schools, form an important part of the educational institutions of the State.

State Library and Museum.

The State Library, in both its departments, has been enlarged by the application of all the means at the disposal of the trustees. In the extent and value of its contents, it is a source of just pride to the people of the State. The Law Library numbers about twenty-six thousand volumes, and the General Library about sixty-eight thousand, including many rare and valuable works. The State Museum of Natural History, under the management of its able curator, Professor Hall, is reported to be in excellent condition, and exhibits the productions of the State in a manner to afford to the student of natural science most valuable aid in his studies.

The National Guard.

The National Guard consists of eight divisions, containing nineteen brigades, composed of one regiment and nine separate troops of cavalry, one battalion and ten batteries of artillery, thirty regiments and thirteen battalions of infantry. Total officers, non-commissioned officers, musicians, and privates (three brigades estimated), 20,532.

Soldiers of war of 1812.

The last Legislature made an additional appropriation of a hundred thousand dollars for redeeming certain certificates issued to soldiers of the war of 1812. The former appropriation paid on the certificates allowed

$91.52\frac{5}{100}$ on $100 of principal. The appropriation of 1874 paid the balance due on the principal, and $46.72 on $100 of interest.

War claims against the United States.

On the first day of January, 1874, the unsettled balance in favor of the State was $1,209,286.11. Since that time another instalment of over $34,000 has been presented to the Treasury Department. In the unsettled balance above stated is included a claim for $131,188.02, interest on comptroller's bonds, which cannot be paid without legislative action.

Salt springs.

The quantity of salt from the Onondaga Salt Springs inspected during the last fiscal year was 6,594,191 bushels, less by 1,364,981 bushels than the production of the preceding year. The net revenue from this source was $10,341.67, showing a falling off, as compared with the preceding year, of $11,424.08.

State prisons.

The following statement shows the expenditures and earnings of each of the prisons for the year ending Sept. 30, 1874: —

	Advances from the Treasury.	Received from Earnings.	Excess of Expenditures.
Auburn	$233,166.90	$101,910.40	$131,256.50
Clinton	337,674.12	153,473.60	184,204.52
Sing Sing	360,054.58	124,009.43	236,045.15
Miscellaneous[1]	....	....	37,031.25
	$930,899.60	$379,393.43	$588,537.42

In 1867 the excess of advances from the Treasury over receipts from earnings was	$366,874.79
In 1868 it was	512,547.74
In 1869 it was	595,774.45
In 1870 it was	461,304.99
In 1871 it was	470,309.23

[1] Miscellaneous Expenditures, not distributed, including $26,231.25 for transportation of convicts.

In 1872 it was	$465,881.84
In 1873 it was	597,289.06
In 1874 it was	588,537.42

The number of convicts in each of the prisons, Sept. 30, 1874, was as follows: —

Auburn	1,202
Clinton	552
Sing Sing	1,306
	3,060
Total, Sept. 30, 1873	3,025

XXXV.

Some four months prior to the convening of the New York Legislature in 1875 a body of United States soldiers, in pursuance of orders from General Sheridan, entered the Legislature of Louisiana while that body was in session and removed from it five of its members, under the pretext that they had been illegally seated, and that in some undefined contingency violence might result from their remaining there. The first impulse to this outrage upon the sovereignty of Louisiana was given by the following letter from Governor Ames of Mississippi and the accompanying documents, written shortly before the then impending State election.

Jackson, Miss., Sept. 8, 1875 (5.30 p.m.).

To President U. S. Grant, Washington, D. C.:

Domestic violence prevails in various parts of this State beyond the power of the State authorities to suppress. The Legislature cannot be convened in time to meet the emergency. I therefore, in accordance with Section 4, Article IV. of the Constitution of the United States, which provides that the United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive when the Legislature cannot be convened, against domestic violence, make this my application for such aid from the Federal Government as may be necessary to restore peace to the State and protect its citizens.

Adelbert Ames, *Governor.*

Governor Ames, having been asked for further information, made reply under date of September 11, in which he said: —

"The necessity which called forth my despatch of the 8th instant to the President still exists. Your question of yesterday asks for information, which I gladly give. The violence is incident to a political contest preceding the pending election. Unfortunately, the question of race, which has been prominent in the South since the war, has assumed magnified importance at this time in certain localities. In fact the race-feeling is so intense that protection for the colored people by white organizations is despaired of. A political contest made on the white line forbids it."

On September 14 Attorney-General Pierrepont sent the following letter to Governor Ames: —

Department of Justice, Washington, D. C., Sept. 14, 1875.

To Governor Ames, Jackson, Miss.:

This hour I have had despatches from the President. I can best convey to you his ideas by extracts from his despatches: —

"The whole public are tired out with these annual autumnal outbreaks in the South, and the great majority are ready now to condemn any interference on the part of the Government. I heartily wish that peace and good order may be restored without issuing the proclamation; but if it is not, the proclamation must be issued. But if it is, I shall instruct the commander of the forces to have no child's play. If there is a necessity for military interference, there is justice in such interference, to deter evil-doers. I would suggest the sending of a despatch or letter, by means of a private messenger, to Governor Ames, urging him to strengthen his own position by exhausting his own resources in restoring order before he receives Government aid. He might accept the assistance offered by the citizens of Jackson and elsewhere. Governor Ames and his advisers may be made perfectly secure; as many of the troops now in Mississippi as he deems necessary may be sent to Jackson. If he is betrayed by those who offer assistance, he will be in a position to defeat their ends and punish them."

You see by this the mind of the President, with which I and every member of the Cabinet who has been consulted are in full accord. You see the difficulties, you see the responsibilities which you assume. We cannot understand why you do not strengthen yourself in the way the President suggests, nor do we see why you do not call the Legislature together and obtain from them whatever power and money and arms you need. The Constitution is explicit that the Executive of the State can call upon the

President for aid in suppressing domestic violence only when the Legislature cannot be convened; and the law expressly says: "In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the Legislature of said State, or of the Executive when the Legislature cannot be convened," etc. It is plain that the meaning of the Constitution and laws when taken together is that the Executive of a State may call upon the President for military aid to quell domestic violence only in case of an insurrection in any State against the government thereof when the Legislature cannot be called together.

You make no suggestions even that there is any insurrection against the government of the State, or that the Legislature would not support you in any measures you might propose to preserve the public order. I suggest that you take all lawful means and all needed measures to preserve the peace by the forces in your own State, and let the country see that the citizens of Mississippi, who are largely favorable to good order, and who are largely Republican, have the courage and the manhood to fight for their rights, and to destroy the bloody ruffians who murder the innocent and unoffending freedmen. Everything is in readiness. Be careful to bring yourself strictly within the Constitution and the laws; and if there is such resistance to your State authorities as you cannot by all the means at your command suppress, the President will quickly aid you in crushing these lawless traitors to human rights.

Telegraph me on receipt of this, and state explicitly what you need.

Very respectfully yours,

EDWARDS PIERREPONT.

The election took place on the 2d of November, and resulted in a general defeat of the Republicans. The total vote for State treasurer was 162,751, of which Hemenway received 96,596, and Buchanan 66,155, making the majority of the former 30,441. Six members of Congress were chosen at the same time. In the first district L. Q. C. Lamar, Democrat, was elected without opposition; in the second, G. Wiley Wells, Democrat, received 19,250 to 13,149 for A. R. Howe, Republican; in the third, H. D. Money, Democrat, received 13,774, to 5,883 for R. C. Powers, and 5,114 for F. H. Little; in the fourth, O. R. Singleton, Democrat, received 19,890 to 9,914

for Jason Niles; in the fifth, Charles E. Hooker, Democrat, received 16,539 to 10,653 for James Hill; and in the sixth, John R. Lynch, Republican, was elected, receiving 13,741 votes to 13,510 for Roderick Seal. The Legislature, elected at the same time, consisted of twenty-six Democrats and eleven Republicans in the Senate, and ninety-seven Democrats and twenty Republicans in the House,— making the Democratic majority fifteen in the Senate and seventy-seven in the House, or ninety-two on a joint ballot.

Regarding the result of the election, Senator H. R. Revels, colored, wrote to the President as follows: —

"Since the reconstruction, the masses of my people have been, as it were, enslaved in mind by unprincipled adventurers, who, caring nothing for the country, were willing to stoop to anything, no matter how infamous, to secure power to themselves and perpetuate it. My people are naturally Republicans; but as they grow older in freedom, so do they in wisdom. A great portion of them have learned that they were being used as mere tools; and, as in the late election, not being able to correct the existing evil among themselves, they determined, by casting their ballots against these unprincipled adventurers, to overthrow them. My people have been told by these schemers, when men were placed upon the ticket who were notoriously corrupt and dishonest, that they must vote for them; that the salvation of the party depended upon it; that the man who scratched a ticket was not a Republican. This is only one of the many means these malignant demagogues have devised to perpetuate the intellectual bondage of my people. To defeat this policy, at the late election men, irrespective of race or party affiliation, united and voted together against men known to be incompetent and dishonest. I cannot recognize, nor do the masses of my people who read recognize, the majority of the officials who have been in power for the last two years as Republicans. We do not believe that Republicanism means corruption, theft, and embezzlement. These three offences have been prevalent among a great portion of our office-holders; to them must be attributed the defeat of the Republican party in the State, — if defeat there was; but I, with all the lights before me, look upon it as an uprising of the people, the whole people, to crush out corrupt rings and men from power. The bitterness and hate created by the late civil strife have, in my opinion, been obliterated in this State, except, perhaps, in some localities, and would have long since been entirely effaced, were it not for some unprincipled men who would

keep alive the bitterness of the past and inculcate a hatred between the races, in order that they may aggrandize themselves by office and its emoluments to control my people, the effect of which is to degrade them."

In defiance of the state of facts and of public opinion indicated by the election returns and by the statement of Senator Revels, himself a colored man, General Sheridan presumed to order United States soldiery to enter the hall in which the Legislature was sitting; to determine who were and who were not entitled to participate in its deliberations; and to remove five of the members of the body from the hall by force to make place for five others whom the Legislature, in the completeness of its authority to determine who were entitled to participate in its deliberations, had solemnly excluded. Governor Tilden chose to treat this outrage upon the sovereignty of Louisiana as an outrage upon every sovereign State of the Union; and as such he deemed it his duty to lodge his official protest against it in the following Message. It deserves to be noted as an additional motive for his making common cause with Louisiana in this matter and for inviting the attention of the New York Legislature to a subject lying wholly outside of its jurisdiction, that the Cabinet at Washington had officially approved of General Sheridan's proceedings.

THE OUTRAGE UPON THE SOVEREIGNTY OF LOUISIANA.

Executive Chamber, Albany Jan. 12, 1875.

To the Legislature:

On your re-assembling I deem it to be my duty to invite your attention to the grave events which have happened in our sister State of Louisiana. The interval of your adjournment has offered you an opportunity to receive the statements of the parties concerned in those occurrences, particularly that of Lieutenant-General Sheridan in his official Report to the Secretary of War, dated Jan. 8, 1875. You are now enabled to know with certainty all the facts necessary to form a just and deliberate judgment as to the nature of the principal acts which have created so much public excitement.

According to the official Report of Lieutenant-General Sheridan, the United States soldiers entered the House of Representatives of the State of Louisiana while that body was in session and removed from it five of its members. The pretexts for this act are: First, that it was done under directions from the Governor of the State, recognized by the President. Second, that the persons removed "had been illegally seated," and "had no legal right to be there." Third, that a fear existed in the mind of Lieutenant-General Sheridan that in some undefined contingency violence might happen.

With respect to the first and second of these pretexts, it is a decisive answer that the Louisiana House of Representatives had by the Constitution of that State the exclusive judgment as to the right of these members to seats; that its judgment

is subject to no review by any judicial authority, still less a review by the Governor or by any officer of the United States army; and that its judgment in favor of these members thus forcibly removed is binding in law and conclusive upon the Governor and Lieutenant-General Sheridan and upon every other person. In respect to the third pretext, the fear in the mind of Lieutenant-General Sheridan of possible future violence when no violence really existed, is not only no lawful occasion, but not even an excuse for an invasion of the right of the House of Representatives of Louisiana to judge for itself of the title to seats of its own members.

Interference by United States soldiers was not only unlawful, but it was without the color of legality. It was an act of naked physical force, in violation of the laws and the Constitution of Louisiana and of the laws and Constitution of the United States. There is a case of a disputed seat in the Senate of this State now pending; another was determined at the last session. The transaction in Louisiana is as if, at the instance of the Governor of this State, General Hancock, commanding in this department, or an officer specially deputed by the President, should send a file of Federal soldiers and remove the incumbent to whom the seat had been adjudged by the Senate. That disorders have formerly existed in Louisiana makes no difference; for the laws — to which the President and Congress are parties — recognize the complete restoration of her autonomy. The right of her legislative bodies to determine the title of their members is as perfect and absolute as the right of the Assembly or the Senate of New York.

The animus of the transaction, as indicated by the correspondence between Lieutenant-General Sheridan and the Secretary of War, is infinitely worse than the transaction itself. On the day after the event Lieutenant-General Sheridan sent a despatch proposing that a class of citizens, indefinite in number and description, should be declared, either by act of Congress or by proclamation of the President, to be banditti; and then indicates his purpose to try them and execute them by military

commission. On the next day General Belknap, the Secretary of War, telegraphed to General Sheridan that "the President and all of us have full confidence in and thoroughly approve your course."

The nature of the acts thus proposed by the officer second in command of the army of the United States, and thus adopted and sanctioned by the President and his constitutional advisers, is plainly declared by the common law. In the recent case of the Queen *vs.* Nelson and Brand the present Lord Chief Justice of England, in delivering the charge to the grand jury, declared that, "supposing that there is no jurisdiction at all, that the whole proceeding is *coram non judice*, that the judicial functions are exercised by persons who have no judicial authority or power, and a man's life is taken, — that is murder; for murder is putting a man to death without a justification, or without any of those mitigating circumstances which reduce the crime of murder to one of a lower degree. Thus, in the case put by Lord Coke of a lieutenant having a commission of martial law in times of peace, — that, says Lord Coke, is murder." Such are the established doctrines of the jurists and courts of this country and of England. Such is the voice of common law, — glorious jurisprudence of freedom, birthright of every American citizen! Its stern logic declares that such an execution of any human being as was proposed and sanctioned in this correspondence would be murder by our laws, and that every functionary, civil or military, who should instigate it, aid or abet it, or become in any manner a party to it before the fact, would be guilty as a principal in that crime.

The patriot statesmen who achieved our national independence and formed our institutions of free government foreboded, if we should ever fall into intestine strife, that the ideas it would inspire in military minds of insubordination to the laws and of uncivic ambition, and the habit it would generate in the people of acquiescence in acts of unlawful military violence, would imperil, if not destroy, civil liberty. Events com-

pelled us to a manly choice of confronting these dangers in a struggle to save our country from dismemberment and to vindicate the just rights of the Federal Union. Having triumphed in that struggle, now forever closed, we are made sensible of the wise foresight of the founders of our freedom in their warning of the opposite dangers which would attend our success. Those dangers come to us in acts of illegal military violence committed in times of peace; in the usurpation by the soldiery of a power to decide the membership of our legislative assemblies, whose right to judge exclusively in such cases has ever been guarded with peculiar jealousy by our race; in the proposal, made and accepted by our highest civil and military functionaries, to subject our citizens to tribunals in which a military officer will decide without appeal what persons happening to be found in the locality shall be sent to them for trial, will appoint the members of the court, will review and confirm or change the judgment and sentence, and may order instant executions, in which the accused will be tried in secret, and without counsel for his defence. This proposition is thus made and thus sanctioned, notwithstanding that for similar acts our English ancestors sent the First Charles to the scaffold and expelled the Second James from the throne; and our own forefathers, exiled by kindred tyrannies and planting freedom in the wilderness, were careful to insert in our Constitution positive prohibitions against the application to any but military persons of such tribunals.

Unless such a proposition, so made and so sanctioned, shall be condemned by a public reprobation which shall make it memorable as a warning to all future officers of the State and the army, the decay of the jealous spirit of freedom, the loss of our ancestral traditions of liberty acquired through ages of conflict and sacrifice, the education of the present generation to servile acquiescence in the maxims and the practices of tyranny will have realized the fears of Washington and Jay and Clinton and their compatriots.

New York, first of the commonwealths of the American

Union in population, in resources, and in military power, should declare her sentiments on this occasion with a distinctness, a dignity, and a solemn emphasis which will command the thoughtful attention of Congress, of her sister States, and of the people of our whole country. With the same unanimity with which she upheld the arms of the Union in the past conflict, she should now address herself to the great and most sacred duty of re-establishing civil liberty and the personal rights of individuals, of restoring the ideas and habits of freedom, and of re-asserting the supremacy of the civil authority over the military power throughout the Republic.

XXXVI.

On the 3d of February, 1875, William H. Wickham, then mayor of the city of New York, wrote to Governor Tilden that he had removed the Corporation Counsel, Mr. E. Delafield Smith, because of "his failure in the performance of, and his personal unfitness for, the duty of prosecuting the city's claims against William M. Tweed and others; his refusal to institute proceedings to enforce the claim against Henry Starkweather and others, with the publication of his pretext for so doing; and his disregard of the rights of the city in cases where it is defendant, and which he has, by express consent or by neglect of opportunities for active resistance, allowed to be sent for trial before referees instead of before a jury, the appropriate tribunal." The Mayor, in another communication of the same date, assigned his reasons for the removal of Mr. Smith, and charged him with having been appointed to office in the autumn of 1871 "under extraordinary circumstances, and by persons, all of whom at that time stood charged with, and some of whom have since been proved to have been guilty of, literally stealing enormous sums from the municipal treasury," and that although three years have passed since the Ring suits were begun, he had made no real progress in prosecuting them.

Reference is next made to the alleged refusal of Mr. Smith to institute proceedings against Mr. Henry Starkweather, formerly head of the Bureau for the Collection of Assessments in the Street Department, to recover the sum of $130,000 of public moneys which he and his associates retained, and also to the fact that he sent cases in which the city was defendant to a referee instead of to a jury.

The Mayor also notified the Governor, in two communications dated February 3, that he had removed the fire commissioners for "cause."

The Governor replied to all the above communications on the 5th in a letter in which he stated that it was proper, always prudent, and might often be necessary that he should inspect all the allegations of the parties, the proofs, if any taken, and the documents which might throw light on the case. He therefore requested the Mayor to transmit all the papers to him.

On the 10th the Mayor sent a reply to the Governor, in which he stated that he had performed his whole duty in the matter, and was advised that the Governor had no power to require more at his hands.

This challenge from the Mayor imposed upon the Governor the necessity of examining and defining the respective powers of mayors and governors in the exercise of the delicate and solemn duty of removing "for cause." The results of his examination were embodied in the following letter to Mayor Wickham.

THE GOVERNOR'S POWER OF REMOVALS FROM OFFICE FOR CAUSE.

Executive Chamber, Albany, Feb. 17, 1875.

Hon. William H. Wickham, Mayor of the City of New York:

Sir, — Your messenger delivered to me the papers in the removal cases, at my house, at about six o'clock in the evening of February 4. As he informed me he should return by the 2.40 train of the next afternoon, I told him if he would call at the Executive Chamber at 12 M. the answer would be ready. In the mean time I looked over the papers and saw that other information might probably be necessary, and at the time appointed gave him my letter of February 5. On the 11th instant I received a communication from you setting up the novel theory therein contained as to my duties. Desiring to reply to it at as early a day as my current official engagements would allow, and as was consistent with the necessity of my sending to New York for some papers involved in the discussion, which were yesterday received, I will now state my conclusions.

The questions are two: —

1. The nature of the removal for cause, as it exists under the Constitution and laws of this State.

2. The nature of the duty of the governor, in giving or withholding his approval of a removal, under Section 25 of Chapter 335 of the Laws of 1873.

Causes of removal.

Removals for cause are distinguishable from removals which are in the arbitrary will of the officer vested with the power, and which have generally followed the changes of the removing power or of party ascendency.

The system was devised in the Convention of 1821 by Daniel D. Tompkins, Rufus King, and other foremost statesmen of the time, specially for the case of sheriffs, and was applied also to county clerks.. The Constitution of 1846 extended it to district attorneys and coroners. It has been applied by constitutional provision and by statute to many other cases. Its original object, doubtless, was to reconcile the necessary accountability to the State with a dispersion of the appointing power to the localities. Incidentally, it gave the minority a representation in public trusts, and exempted the mass of important local offices from change of their incumbents before the expiration of their terms on every fluctuation of party majorities in the State.

The council of appointment under the Constitution of 1777, consisting of the governor and four senators, had the appointment and removal at will of nearly all the local officers in the State, numbering nearly fifteen thousand, when our population was but one third of its present magnitude. That council became a public opprobrium, and was abolished by universal consent.

To-day the one hundred and eighty sheriffs, county clerks, and district attorneys within the State, and at least two hundred and fifty other officers, are removable by the governor, subject to no restriction but "giving to such officer a copy of the charges against him and an opportunity of being heard in his defence." For fifty-three years this system has operated successfully in this State. These important officers have felt safe in the performance of their duties and in the tenure of their offices when the power of removal was in the hands of a political adversary, against whom they were waging an active political warfare. They have been free to exercise as fully as other citizens their rights in all party controversies.

The rule which binds the conscience of the governor in the exercise of this vast power has been hitherto respected. I do not intend to impair its authority, or in any other respect to lower the standard of official honor or public morality. The

principle on which the whole system rests is, that a removal in such cases must be for a substantial, reasonable, and just cause. The nature of that cause it is not now necessary to discuss.

It is true, as elaborately argued by you, that the judgment in such a case of the officers vested with the power of removal, as to the cause alleged, is not subject to review by the courts, for the purpose of reversing that judgment or reinstating the person removed. The power, therefore, exists to give legal effect to a removal, without obeying the rule which is binding on the conscience of the functionary making it. But a disregard of that rule would be none the less a violation of right and duty; it would be the immoral power to do wrong, because the law had not disabled the officer having the discretion. In the case of the governor, such a violation, if committed in evident bad faith, or by a gross abuse implying bad faith, would doubtless render him liable to removal by impeachment. In the case of the mayor, it would expose him to removal in the manner provided by the statute. But inasmuch as in many instances removals might be wrong, without involving proofs leading to such consequences, a check on the removing power has been frequently established by requiring the concurrence of some other independent body or functionary. In many cases the concurrent action of the governor and Senate is required; in others the concurrent action of the Senate and Assembly.

I have been thus explicit in stating my views on this subject in order to illustrate the grounds of my dissent from a construction of my powers and yours which would practically convert removal for cause into removal at arbitrary will. These conclusions, the reasons for which are now explained, have been stated to you on several recent occasions.

Approval by the governor.

The charter of the city of New York provides that the removal of the heads of departments made by the mayor shall be "for cause," "after opportunity to be heard," and "subject, however, before such removal shall

take effect, to the approval of the governor, expressed in writing." It also provides that "the mayor shall in all cases communicate to the governor, in writing, his reasons for such removal." It also prescribes that after the removal has been effected "the mayor shall, on demand of the official removed, make, in writing, a public statement of the reasons therefor."

So far as the powers and duties of the governor are concerned, human language cannot well be more simple or plain. It is the act of removal which is to be judged of by the governor; that act is to be "approved" or not approved. The approval is to be expressed "in writing." The mayor is to contribute whatever means of forming a judgment by the governor may be contained in "his reasons," expressed in writing. But there is not one word limiting in any manner the governor's means or method of arriving at a conclusion whether or not he ought to "approve" a particular removal; he is as free to inform himself and to judge as when he writes "approved" on a bill sent him by the Senate and Assembly. His duty to collect from some source the materials for a judgment, so that when he writes "approved" it may be the truth, and not a falsehood, is quite clear.

The theory which is supported by the long and elaborate argumentation of your letter is that in forming his judgment the governor is limited to such information as the mayor may choose to give him; that he is shut out from all other knowledge; that he must take every statement of fact made to him by the mayor as established and indisputable truth; that his own function is confined to the narrow act of deciding whether the thing charged, assuming all the alleged facts to be true, is a sufficient cause of removal. The governor, if I understand this doctrine aright, is a check upon the logical processes of the mayor, and upon nothing else. It would result, then, that if the mayor alleged a fact which the governor happened personally to know to be untrue, — as, for instance, that an officer committed an act known to be done in the city of New York at a

time when that officer was before the governor in the Executive Chamber at Albany, — it would be the duty of the governor, if the act alleged would have been a sufficient cause of removal, to certify his "approval" of the removal, which he did not in fact approve, and when he knew the accused to be wholly innocent. It may often happen that accusatory accusations are so compounded of fact and inference, that no analysis can separate the elements without extraneous aid.

But it is said that this novel theory, which has no support in law, reason, or common sense, and is confuted by the words of the statute of which it is a construction, is established by a precedent set by Mayors Havemeyer and Vance, and by Governor Dix. You state that the procedure which you insist on is a "practice now established by precedent;" that "the practice was adopted by [your] predecessors, under advice of counsel, and assented to by Governor Dix after mature consideration." Precedent.

My recollection of the case to which you refer, — the removal of Messrs. Bowen and Stern as commissioners of charities, — does not accord with your view. I have just received from New York papers in those cases sufficient to determine their effect as a precedent. Governor Dix initiated the charges in a letter to Mayor Havemeyer, dated Nov. 27, 1874. In that letter he stated that he had "ascertained" the facts in regard to the treatment of Tweed which were alleged as the cause of removal. He then said that the facts so alleged were "disgraceful to the State, a criminal violation of duty on the part of those who have granted the indulgences referred to, in utter contempt of the law and the determination of juries and courts, and cannot fail to bring lasting discredit on all by whose official interposition this abuse may be corrected."

On the 28th of November Mayor Havemeyer addressed a letter to Mr. Bowen, the president of the commission, containing the substance of Governor Dix's communication; but it does not appear whether the letter was ever delivered. On the 3d of December Mayor Vance sent a note to the commissioners,

with a copy of Governor Dix's letter. Mayor Vance's note contained no independent charges; it simply offered the commissioners an opportunity to be heard on the charges contained in the letter of Governor Dix, and expressed the opinion that the matter stated therein, if true in fact, was sufficient cause for their removal from office. The defences of Messrs. Bowen and Stern were forwarded to Governor Dix with the charges.

Such is the precedent which you cite as authority for the theory that the governor can lawfully obtain and can lawfully consider no facts except such as are communicated by the mayor. Every one of the facts contained in the charges of Mayor Vance originated with Governor Dix, and were "ascertained" by him to exist. Equally bad is the precedent in respect to withholding the answer of the accused parties which I requested. Those answers were sent to Governor Dix as a matter of course, and were before him when he acted. His approval may, indeed, in one sense have been a mere form, for he had found the facts on his own information, acquired in his own way, and had made his deductions from them that they were sufficient cause for removal, before the mayor had touched the subject. Therefore it appears that the case which you cite is in direct contradiction and condemnation of your theory of my duties.

Procedure.

You are quite correct in saying that the mayor is "something more than a commissioner to take testimony for the consideration of the governor." Doubtless he is an independent power, whose concurrence is necessary to effect a removal; he is no more. The governor appoints with the consent of the Senate in certain instances; and on the recommendation of the governor the Senate removes. It makes no difference that in one case the act is nominally that of the governor, and in the other that of the Senate. In both cases the act is ineffectual until it has received the concurrence of each authority.

In removals by the mayor it is expressly provided by law that the act shall not take effect until it is approved by the

governor; until then it is inchoate and inoperative. In removals by the Senate and Assembly, either House may originate; there may be two investigations; and, under the existing practice, the investigations amount almost to two trials. In removals by the governor and Senate, the initiation is by the governor, and there may be two investigations.

So far as I have observed, the practice is for the functionary who initiates a proceeding for a removal to communicate to the body which must concur in the act all the information he possesses. That is what my predecessors have done; that is what I should do as a matter of course. It is my opinion that the functionary who initiates a removal in such a case should take care that all important acts and proofs are in writing and of record.

I do not now discuss the question whether the "reasons" which the law requires to be communicated include the material facts and the proofs of their existence, — the confession of the accused party, his denial, his excuse, or justification. It is quite clear that every consideration of justice and of public policy favors the more enlarged and liberal construction of the obligation to present all information tending to elicit the truth. Even where the duty of initiating the proceedings for removal is not imposed by law upon one of the functionaries or bodies who must concur in the act, and where their relations are of independent and equal powers, comity is exercised between them, and the request of one for information or evidence in the possession of another is always respected.

In seeking for the information necessary to enable me to discharge the duty imposed upon me by statute, courtesy to you required that I should first apply to you for such facts as were in your possession; and I regret that your notions of official dignity and duty oblige you to withhold from me the most satisfactory evidence upon the subject in respect to which I am called upon to act.

In expressing my opinions, I desire to abstain from all criticism of yours. I certainly do not wish to detract from the

dignity of the great trust you hold, to encroach upon its just powers, or to construct precedents, especially where precedents have no binding force. To do what is according to law and to right, in each single case, is all I seek. You must do what you think is proper to protect your office and yourself. If your view of duty operates to embarrass and delay my action, I shall, nevertheless, as soon as the current official business, which affords me abundant occupation, allows the leisure, take up the cases for independent consideration.

Decision.

My decision is that the governor is not limited by law to the consideration of such facts as may be communicated to him by the mayor, but that, on the contrary, it is his right and his duty to accept, and, if needful, to seek all information necessary to enable him to decide whether he ought to give or to withhold his "approval" of an act of removal initiated by the mayor, under the law which defines their respective powers and obligations in such cases.

I have the honor to be, with great respect,

Your obedient servant,

SAMUEL J. TILDEN.

XXXVII.

The deplorable legislative and administrative corruption and abuses which had tasked the energies of Mr. Tilden for the four or five years preceding his election as governor, unhappily were not restricted to the territorial limits of New York city, though their hideous proportions were there first discovered and exposed. They were found to have infected pretty much every department of the public service in the State. Outside of New York city, their most malignant centre was the Canal Department. The expenses of the canal system of the State for the five preceding years had been not only out of all proportion to the receipts, but equally out of proportion to the amount and quality of the work called "repairs," "ordinary" and "extraordinary," for which they were ostensibly incurred. Even before he took the oath of office, Mr. Tilden, at his own expense, instituted a secret but thorough investigation of the work to which these enormous expenditures were attributed; and at an early stage of the session had in his possession conclusive evidence that under every important contract let, at least during the five preceding years, the State had been grossly overcharged, and that, by the systematic collusion of the State authorities, over a million of dollars had been paid out to contractors which not only had not been earned, but, so far as they had been expended on the canals, had worked injury rather than advantage to them. When the Governor had these facts in such a shape that there was no room left to question their accuracy, and no insurmountable obstacle to proving them, he brought the subject to the attention of the Legislature with such fulness and precision of specifications as not only to spread consternation among the parties inculpated, but also to arrest the attention of the whole nation. This document is still known and referred to as "Governor Tilden's Canal Message."

THE CANAL MESSAGE.

EXECUTIVE CHAMBER, ALBANY, March 19, 1875.

To the Legislature.

I HAVE received a petition from forwarders, boatmen, and others engaged in transportation on the canals of this State, representing that the depressed state of their business calls for legislation and necessitates a reduction of tolls, and requesting me to look into the condition of the canal commerce, and to make such recommendations to the Legislature as will lead to measures of relief.

Respectful consideration is due to so large and important a class of our business men. They are proprietors of about six thousand boats, which are said to give employment directly to thirty thousand persons, and indirectly to twenty thousand others. They are in the peculiar relation of partners of the State in a vast internal commerce, owning and managing the equipment, while the State owns and manages the body of the canals. The State, therefore, has not only a common interest in the preservation of the joint business, but also a distinct and special interest in the ability of its partners to continue to perform their functions, without which the joint business could not be transacted. It cannot afford to suffer the equipment of the canals to be broken up, to allow a dispersion of the traffic, which, if once lost, will not be easily regained, or to omit any measures of retrenchment in expenditure or economy of administration which will enable it and its partners to meet successfully the increasing competition of the railways with each other and with water transportation.

Impressed with the considerations which induce a liberal policy on the part of the State toward its partners in the internal commerce it has seen fit to undertake, I am, on the one hand, predisposed to every practical and just measure for enfranchising trade and industry and cheapening the interchange of commodities, and, on the other, to listen to the rightful complaints of our people against the extreme burden of our present taxation and the prodigal and wasteful expenditure in connection with the canals, which is one of the main causes of such taxation.

I have, therefore, felt it my duty to devote the intervals of time I could command to a personal investigation of the subject, in order to be able to recommend to you such specific measures as the exigency seems to require, in the direction indicated in the following passage of the Message I had the honor to communicate at the beginning of your session: —

"A careful investigation whether the net incomes of the canals retained cannot be increased, ought to precede a surrender of what little now exist. Ordinary repairs should be scrutinized with a view to retrenching their cost and to obtaining the largest possible results from the outlay. . . . All improvements should be governed by a plan and purpose leading to definite results, and instead of scattering expenditures on imperfect constructions, should aim to complete and make available the specific parts undertaken. Unity of administration and of system, both in respect to repairs and improvements, should be established."

Probable income of the canals.

Exhibit A is a comparative monthly statement of the tolls on all the canals for the years 1873 and 1874. It shows that during the months of October and November, and a few days of December which fall within the present fiscal year, in which period about one quarter of the tolls of the year were collected, the decrease of tolls is from $836,123.27 to $638,132.96, or $197,990.31. The decrease is about one fourth of that portion of the tolls. A corresponding decrease for the months of May, June, July,

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August, and September, 1875, as compared with the same months of 1874, would amount to $600,000. That would leave the tolls for the fiscal year of 1875 at $2,037,000.

Assuming them to realize $2,250,000, we are next to find the probable effect of the reduction in rates which is now proposed.

Exhibit B is a statement of the effect of the reduction in the rates proposed computed on the tolls of the calendar year of 1874. If a similar computation be made on $2,250,000, instead of $2,637,070, the reduction of receipts to be produced by the lowering of the rates would be $534,832. The gross tolls accruing from all the canals for the fiscal year ending Sept. 30, 1875, would be $1,715,168.

This diminution of tolls presents in a strong light not only the general depression of commerce, but particularly that of the special business of the boatmen and forwarders.

Taxation for canal purposes during five years from Oct. 1, 1869, to Sept. 30, 1874.

The public mind is apt to be confused by the various methods in which the complex accounts of the State are kept. A careful analysis and comparison of those accounts enables the following results to be stated in a simple form: —

The total amount of the tolls on all the canals during the five fiscal years ending Sept. 30, 1874, was	$15,058,361.75
The aggregate of ordinary expenses and ordinary repairs during the same period was	9,202,434.23
The apparent surplus was	$5,855,927.52

The aggregate of extraordinary repairs during the same five years was	$10,960,624.84
Deduct the apparent surplus	5,855,927.52
Real deficiency, being excess of repairs ordinary and extraordinary over the whole tolls	$5,104,697.32

Other payments were, —		
Interest	$2,908,617.46	
Cost of premium on gold	703,468.35	
Cost of premium on stock purchased	31,736.00	
Transfer expenses, etc.	21,238.49	
		$3,665,060.30
Actual cost, exclusive of reduction of debt		$8,769,757.62
Payment of debt, —		
Canal debt	$2,334,350.00	
General Fund debt, over the reduction of moneys in sinking funds,	2,552,132.28	
		$4,886,482.28
Contribution to General Fund		200,000.00
		$13,856,239.90
The taxes levied for these purposes during the same period were		$14,789,848.25

All these payments are directly for canal purposes, except $2,552,132.28, which is in reduction of the General Fund debt, and $200,000, which was supplied to the General Fund. These two payments, also, are indirectly of the same character; they merely replace fresh advances made by the General Fund to the canals.

In the five years anterior to the period under consideration, from Oct. 1, 1864, to Sept. 30, 1869, the taxes levied to meet deficiencies in the sinking fund were $1,873,030.54, and the taxes levied for extraordinary repairs, awards, etc., were $6,322,632.52, making $8,195,663.06.

The Constitution (Art. VII. sec. 5) provides that "Every contribution or advance to the canals or their debt, from any source other than their direct revenues, shall, with quarterly interest at the rates then current, be repaid into the Treasury, for the use of the State, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt."

In citing this mandate of the Constitution, it is not intended to revive the illusion that even the most recent advances of the

State for the use of the canals will ever be restored to the Treasury. There is little probability that they can be regarded as investments capable of producing a reliable income. So far as these enormous outlays have been usefully expended, the State will have to find its compensation for the taxes it has imposed upon the people, in the indirect benefits of its efforts to cheapen the interchange of commodities.

Exhibit C shows the expenditures for extraordinary repairs, etc., for each of the five years. Exhibit D shows the expenditures from taxation for the sinking funds during the same period. Exhibit E shows the specific application of the surplus of tolls over ordinary expenses and repairs.

Character of the expenditure.

Some items of the outlay attract attention. On the canals which the amendment of the Constitution authorizes the Legislature to abandon, there was expended for —

Extension of the Chenango Canal	$676,158.68
Black River improvement	15,400.00
Oneida Lake	100,000.00
Extraordinary repairs	899,852.82
Awards, etc.	969,875.57
	$2,661,287.07

If the inability of these canals to meet their ordinary expenses, or indeed to make any respectable contribution toward that purpose, shall compel their abandonment, this great expenditure will be a total waste of money, wrung from the people by taxation.

On the Erie Canal the following are two specimens: —

Work up to Feb. 1, 1875, on contract on section 1 of Erie Canal, contracted at $74,183.40		$458,114.72
Work in Black Rock and Buffalo harbors, expended	$717,333.00	
Engineering expenses estimated	71,733.00	
Additional appropriation unexpended	170,000.00	
		959,066.00
		$1,417,180.72
Total		$4,078,467.79

This constitutes four millions of the eleven millions expended and the twelve millions appropriated for canal improvements within the last five years.

In the mean time the whole expenditure — at rates far too costly — on the Erie Canal for doubling locks was	$718,984.23
For taking out the wall benches	1,013,870.25
	$1,732,854.48

It is impossible, in the limited time which the exigency allows, thoroughly to investigate the vast mass of various outlays which have cost the people eleven millions of dollars. But the necessity of determining at once the tolls and appropriations; a sense of how small a share of this burdensome taxation has attained any real utility, and how much of it has been wasted in unnecessary work or in the extravagant execution of improvements in themselves useful; and a clear perception of the main sources of the evils of administration and of reforms attainable by legislation without a change of the Constitution, — make it my duty now to recommend specific and affirmative measures of redress.

Causes.

It is not merely in the general laxity and demoralization of official and political life that we are to look for the causes of these evils. The interest which fattens on abuses of public expenditure is intelligent, energetic, and persistent. Acting as a unit, it takes part through its members in the organization and the doings of both political parties; seeks to control nominations; rewards friends and punishes enemies; and it begins to operate by every form of seductive and coercive influence upon public officers, as soon as they are elected. The vast mass of the taxpayers are occupied in their daily industries, on their farms and in their workshops, and cannot easily, and do not in fact, make a business of politics. In a silent contest with the tax-consumers they are often practically unrepresented. It is only when they are aroused and organized, and can find representatives whom they trust, that they protect themselves and overwhelm all resistance.

Useless works in the specious garb of improvements are undertaken because of the indifference of the public officers, the inertness of the taxpayers, the indefatigable efforts of an influence seeking a benefit for its locality, which costs it an insignificant share of the burden imposed on the people, or the eager activity of the class who seek profit in contracts for construction without reference to the utility of the work. Vertical walls are made to provide wharves for private individuals, and bridges where no public interest requires them. Fictitious improvements are contrived to supply profitable jobs. Work of real utility is made to cost greatly more than its actual value.

In making these observations I do not leave out of view those honest citizens who, while employed upon the public works, have sought and obtained only a fair and just return for their labor, skill, and capital. But in framing laws we must guard against the influence of self-interest upon the minds of honest men.

Appropriations for ordinary expenses and repairs.

I renew the recommendation in respect to the canals which the recent amendments of the Constitution empowered the Legislature to "sell, lease, or otherwise dispose of," that while the manner of their disposition remains undetermined, "no expenditures should be made on those works not strictly necessary in view of their probable future." In order to carry out this policy, the appropriations for ordinary expenses and repairs upon them should be specified, separated from the provisions for the canals which the Constitution requires to be retained, and should be reduced to the lowest practicable amount.

In respect to ordinary expenses and repairs to the canals which are to be retained as the property of the State, I recur to the suggestion which I had the honor to submit in the Annual Message, —

> "Ordinary repairs should be scrutinized with a view to retrenching their costs, and to obtaining the largest possible results from the outlay."

In the present state of the prices of materials and the wages of labor, if the public officers can be inspired with a resolute purpose to make every expenditure for these objects effective, there ought to be no difficulty in reducing the appropriations from one quarter to one third below the amount provided for last year. The present standard of repair and efficiency must be fully maintained. Everything of good administration consists in the selection of the most necessary and useful objects of expenditure, and in securing the greatest effectiveness in the application of labor and the most advantageous purchase of materials.

If a sense of accountability and a determination to accomplish this result can be diffused throughout the agents employed in the public service, this object will be easily and certainly attained.

The wisdom of abstaining from all new work except that which is not only useful, but absolutely necessary, is obvious. Every item should be scrutinized with jealous care.

Appropriations for extraordinary repairs.

The aggregate ought to be kept within half a million, and as much below that maximum as possible. A thorough retrenchment in ordinary and extraordinary repairs will enable the State to remit for the present year, as compared with the last, to the boatmen and transporters from five to six hundred thousand dollars of tolls, and at the same time to give relief to our over-burdened taxpayers in a reduction of taxes to the extent of more than a million and three quarters of dollars.

If the restoring the Erie Canal to its proper dimensions and the deepening of its water-way, which is by far the most useful improvement contemplated, can be deferred till next year, after its present condition shall be accurately ascertained, and then be proceeded with gradually, there is little else which cannot wait. Justice to the people and to the canals demands that all extraordinary repairs beyond what are clearly necessary to efficient navigation should be suspended until a thorough investigation shall show that every improvement proposed is

really necessary, and that the work is to be conducted under fair lettings and contracts, and is to be faithfully executed.

Erie Canal.

At the opening of navigation in the present season the double locks will be completed. The capacity of the Erie Canal to do an aggregate business will be several times the requirements of the largest tonnage it has ever had. The removal of the wall-benches will be so nearly completed that the advantages of that change will be practically secured. On Sept. 30, 1874, there remained of wall-benches $24\frac{48}{100}$ miles on the towing-path side, of which $12\frac{25}{100}$ miles are contracted to be removed, and $46\frac{91}{100}$ on the berme side, of which $7\frac{50}{100}$ are contracted to be removed; leaving $12\frac{23}{100}$ miles on the towing-path side, and $39\frac{41}{100}$ miles on the berme side, where the obstruction is much less important; or equivalent in all to twenty-six miles on both sides. That is less than 7 per cent of the whole length of the canal. The engineer's estimate of the cost of removing the remaining wall-benches was, in January, 1874, $711,140; and an appropriation of $360,000 was made by the Legislature of 1874, which will be available for expenditure during the present year. As the only effect of the wall-benches now remaining is that they contract the canal at its bottom from fifty-six feet to forty-two feet, and in that proportion the lower part of the prism, forming a section four feet above the bottom of the water-way, thus lessening the body of water in which the boat moves for a fourteenth part of the length of the channel, and but one fifth of that on the towing-path side, the inconvenience of their existence to this limited extent is not very great or emergent.

In my judgment a far more important improvement of the Erie Canal would be effected by a thorough system of ordinary repairs which should give the water-way its proper and lawful dimensions, and by progressively deepening it wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a larger area of water, so that the displaced fluid could pass

the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls of the canal below the present bottom; and the benefit would be realized in each portion of the canal improved, without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even, than one cent a bushel remission of tolls. It would be of more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions, and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs.

I renew the recommendation of my Annual Message upon this subject; and would draw particular attention to this clause, — "that provisions be made by law to enable the State Engineer, soon after navigation is opened, to measure the depth of water in the canal by cross-sections as often as every four rods of its length, and on the upper and lower mitre-sill of each lock."

Canal lettings.

The Constitution of the State provides that "All contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance." This requirement was intended to protect the State from extravagant contracts; but by artful bids, and in some cases by fraudulent combinations, it is made an instrument to defeat the very end had in view by its authors. I have examined more than one hundred contracts, and I find that most are so contrived that not only does the State in the end pay from two to four times the amount of the contract,

but that the work is not given to the lowest bidder in fact, although it may be in form. This result is brought about by the following contrivance. When a contract is to be let, the engineer makes out an estimate of the quantity and kinds of work to be done. Those who make bids state at what prices they will do each kind of work or furnish each kind of material. These prices are footed up, and the bid which amounts to the smallest sum is accepted. The sums thus agreed upon average but little more than one half the amounts estimated by the engineer, and apparently the State makes advantageous contracts. On examination it will be found that the prices for the several items bear no relation to their real value. In some instances excavation of earth is put at one cent per cubic yard, and in others eighty-five cents are asked; excavation of rock blasted at one cent in some cases, and two dollars in others; slope-wall is bid for in some cases at twenty cents, and in others at two dollars; hemlock timber, which is worth at least twelve dollars per thousand, is in some contracts put at less than three dollars per thousand, and in others at thirty dollars per thousand; oak timber in one instance is put at one dollar per thousand, and in others at seventy dollars. Some items are absurdly low, others unreasonably high. In some instances a contractor will put in proposals on the same day for different jobs; but the prices for the same kind of work or materials will vary in his several proposals many hundred per cent.

It is clear upon the face of such proposals that some fraud is designed; but the commissioners have been in the habit of accepting them. I am happy to say that Commissioner Thayer at a recent letting rejected this class of proposals, which are known as "unbalanced bids." Heretofore they have been accepted; and not only has the State paid unreasonable prices, but more than one half of the work on large contracts has been done and paid for without being advertised or offered to the lowest bidders.

The contractor gains these results by the following strategy:

When the engineer's estimate of quantities and kinds of material are published by the commissioners, the contractor will find out by collusion, or in some other way, what quantities of each kind of work or material will, in fact, be required, or he will see what influence he can exert to change the contract after it is made. If it is changed, no new letting is had, but he claims the job as his right. He then puts in his bid, offering to do such work or to furnish such material as he finds will not be required at all, or in small quantities, at absurdly low prices, at a quarter or in some instances at a twentieth part of its cost. The items which will be required in full, and probably in extra quantities, he will put at unreasonably high rates; and it turns out that what the contractor offers at low prices is called for in small quantities, if at all, while those which are put at high prices are not only required in full, but in most cases in extraordinary quantities.

An example will more clearly illustrate how the State is defrauded by these devices. The engineer having estimated certain work and materials as follows: —

100	cubic yards of vertical wall, at $3	$300.00
3,855	" slope wall, at $1.50	5,782.50
2,400	feet B. M. white oak, at $50	120.00
60,000	" hemlock, at $15	900.00
	Total estimate	$7,102.50
	A.'s bid for the job at these rates amounted to	7,102.50

	B.'s bid for the same was, for	
100	cubic yards vertical wall, at $6	$600.00
3,855	" slope wall, at 30 cents	1,156.50
2,400	feet B. M. white oak, at $70	168.00
60,000	" hemlock, at $3	180.00
	And aggregated	$2,104.50

The proposal of B., apparently so advantageous to the State, was accepted, and the contract awarded to him as the "lowest bidder." But afterward, by some influence, it was decided to make only vertical, and no slope wall, and to use only oak,

and no hemlock timber. There was no re-letting, although the agreement had been in fact revamped into a new and different contract, which enabled B. to collect from the State for

3,955 cubic yards of vertical wall, at $6	$23,730.00
62,400 feet B. M. white oak, at $70	4,368.00
The sum of	$28,098.00

It will be seen that in such transactions, — and they are numerous, — in violation of the Constitution, the contractor gets the work without there having been in fact any public letting, or any chance for competition by others.

For the purpose of showing actual results of this system, I state the following ten cases, which give the amount the State has paid on certain contracts in comparison with the sum for which the contractor agreed to do the work at the lettings made by the commissioners: —

	Amount of contract upon exhibited quantities at contract prices.	Amount actually paid by the State up to Feb. 1, 1875.
Contract No. 1	$74,183.40	$458,114.72
" 2	29,431.00	56,845.68
" 3	37,871.00	110,320.13
" 4	10,617.00	49,936.30
" 5	14,397.00	78,967.20
" 6	85,562.50	220,614.58
" 7	31,286.00	130,317.45
" 8	86,584.00	222,610.68
" 9	9,504.00	41,127.55
" 10	45,300.00	191,915.55
	$424,735.90	$1,560,769.84

These show that the State has already paid nearly four times the amount which was involved by the terms of the contracts; and though this excess amounts to more than a million of dollars, some of the expenditures are still going on, with no prospect of completion. It also appears that of the expenditures of $1,560,769.84, only $424,735.91, less than one third,

was submitted to a public letting. By manœuvres of this character the cost of public works is run up to extravagant sums. Appropriations are absorbed, deficiencies are created to be paid by new appropriations, and the people are loaded down by taxes.

Desiring to co-operate with you in a reform of existing abuses and of the systems which have conduced to them, I submit to your consideration such suggestions for new legislation as seem to me adapted to meet the wishes and protect the interests of our common constituents.

Remedial measures.

Methods ought to be devised to make the estimates of the kinds and quantities of work exhibited on the quantity sheet for lettings of contracts to conform to the actual work to be done. On a change of the plan or specifications of a contract, the work under the old contract should be closed, and a new letting should take place.

Engineers' estimates.

The law authorizes the Canal Board to make regulations as to the biddings, and one of those regulations provided for discarding bids which show bad faith upon their face. As the officers who let the contracts have not enforced this regulation, except in a recent case, a law should be passed defining their rights and duties in this respect.

Biddings.

I recommend that hereafter the bids be opened and the awards of contracts be made by the Canal Board. It is a larger body, and contains the officer who is charged with the fiscal administration of the State, and also the State engineer. It was formerly vested with these duties, and the change was only made to serve a temporary party object.

In the organization of governmental powers two conditions seem essential to the well working of the machinery of administration. First, while undue concentration of powers should be avoided, and checks and balances in the requirement of the concurrent action of several

Official accountability.

persons are preserved, a certain unity of function and of organization is necessary to enable the people to enforce any real responsibility.

An issue in regard to the conduct of public officers or in regard to a policy of administration should be submitted to the people with the simplicity of an issue to a jury at common law. The million of voters in the State cannot resolve themselves into a committee of investigation to hunt out by long and tedious search the particular wrong-doer; they cannot convert themselves into a court to go through a complicated and protracted trial. Amid the numerous and changing objects of interest which attract their attention they cannot devote themselves to a single specific measure of ordinary importance for three successive years. All schemes of administration which involve such impracticable demands for the co-operation of such vast numbers of individuals discard the idea of representation in government; they compel the whole voting mass to conduct the complex affairs of human society in person; they are snares invented to destroy the power of the people in their own government, to neutralize the elective principle, and to create official irresponsibility.

The members of the Canal Board, other than the Canal commissioners and the Lieutenant-Governor, are all chosen at one election. The elective power of the people is effectual to make a change of persons or policy; but the Canal commissioners are elected one each year, and it takes three years to make a complete change. They have practically ceased to act as a board. Each one carries on his administration over his division of the canals as if he were a totally independent authority. They make three separate reports. Each one prepares a separate annual estimate for future expenditures. They formerly sat as members of a board of Canal commissioners, who consulted, decided, and acted as one integral body. Their most important functions were performed as members of the Canal Board, or in concert with the Canal Board, which embraced the great officers of the State, includ-

ing its fiscal representative, who is under an ever-active pressure to make both ends meet in the financial affairs of the State. They were practically subordinate to the fiscal members of the Administration.

Secondly, it is fundamental that the spending officers must be subject to the influence and control of the officers whose duty is to provide the ways and means. No great corporate business, no private affairs could be conducted successfully on any other plan. The experience of the State, under a system in which the officers who initiate expenditure and control the application of the public money and the execution of public work have been independent and practically irresponsible, has been fruitful of irregularities, extravagance, waste, and corruption. There have been several futile impeachments, but no real remedy.

It does not seem expedient to wait for a change which involves an amendment of the Constitution, and will, therefore, take several years. There are measures within the competency of the Legislature which can be put into immediate operation, and which will have great efficiency to remedy the evils. Among these, the suggestion has occurred to me that an inspector of public works can be created by law, who shall be invested with full powers of investigation, and shall report to the Governor and Legislature, and who shall derive his appointment from a source completely independent of the canal officers.

Another expedient worthy of your consideration is to enforce the accountability of the officers charged with the disbursement of the public money, by a liability to summary removal or suspension. The Constitution (Article X. Section 7) commands, —

"Provision shall be made by law for the removal for misconduct or malversation in office of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal."

At the close of the session of the Convention of 1846, on the day before its final adjournment, it was discovered that, except

in the case of the treasurer, no provision had been made for the removal of State officers having charge of public funds, who had been made elective by the people of the whole State. The Convention, not undertaking at so late a period to devise a system, devolved that duty on the Legislature. This power has remained twenty-nine years unexecuted.

It is a duty of the Legislature which ought no longer to remain unperformed. Applied to the Canal commissioners, who are agents not only in the application, but also in the custody and disbursement of the public moneys, and to the State engineer, who, with his subordinates, exercises great power over the expenditure by his estimate of the cost and certificates of the performance of work, it would be an improvement upon our administrative system in accord with the intention of the Constitution, with sound principles of government, and with the indications of experience.

Provision ought also to be made by law for regulating the formation of the annual estimate for future expenditures. It ought not only to be the result of consultation between the Canal commissioners, but should also have the written approval of the State engineer as to the necessity and cost of the work, and of the comptroller as to its propriety, considered in connection with the financial administration.

It would doubtless be a valuable improvement to create a paymaster, appointed by the commissioners of the Canal Fund, who should be accountable to the auditor, and should make all payments on the certificates of the Canal commissioners and the State engineer. With these provisions the control of the State engineer over his subordinates might properly be enlarged.

Other matters to be looked into.

I have deemed it my duty to look beyond the abuses practised in the letting of contracts, and to see if the materials have been delivered and the work has been done for which so many millions have been paid out by the State, and also to learn if the locks, walls, and other structures have been built in a faithful way and in compliance with the contracts. I am satisfied, from information I have already

gained, that there should be an investigation of these subjects. It is my purpose, with the aid of the members of the Canal Board, to have an examination made of our public works, and to learn their condition. It may be too late to detect all frauds; but many may be exposed and punished, and a check put upon practices so destructive to morals, as well as to the public interests of the people of the State.

Conclusion.

It is clear that under the present system of canal management the people will not be relieved from taxation, the boatmen from high tolls, or the needed improvements of the Erie and Champlain canals be finished. It is in our power to gain these great objects by a wise and an honest policy of retrenchment, reform, and official responsibility. Unfortunately the abuses now practised against our canals and their commerce are exciting strong prejudices against these great public works rather than against the wrong-doers and the wrong-doing which tend to destroy them.

Our duty is clear. Let us cut off the expenses which divert revenues from general improvement of the canals to local or individual purposes, and make every official, every employé, every contractor, feel that the laws you have just passed against fraud will be enforced; and then our canals will be finished, their commerce revived, and taxation will be lessened, not only as it oppresses the boatmen, but also all other classes of our citizens.

There is no real antagonism between the boatmen and forwarders who seek a fair compensation for their services, the public who desire cheap transportation, and the people who justly claim some relief from the present intolerable pressure of taxation; their interests are joint. Whenever these classes are brought into a false position of apparent hostility, it is sure proof either of a bad state of laws or of an unfaithful performance of official duties. Whoever for illicit gain despoils or wastes the resources applicable to these objects is the common enemy of the boatmen and the taxpayers, who must unite to enforce measures of reform and redress.

EXHIBIT A.

A comparative monthly statement of the tolls for 1873 *and* 1874.

Months.	1873.	1874.
April	$258,028.29	$361,898.96
May	439,888.24	492,393.57
June	466,825.67	413,525.09
July	455,799.88	308,769.10
August	520,053.40	422,351.24
September	529,214.91	392,460.83
October	304,610.00	243,569.38
November	2,298.36	2,102.75
December		
	$2,976,718.57	$2,637,070.92

EXHIBIT B.

A statement of the amount of reduction of tolls which would result from the plan proposed by the Committee of the Canal Board, computed on the business of 1874.

The reduction proposed is as follows: On wheat, corn, rye, barley, and oats, one third; on products of wood, one quarter; on merchandise, one half.

	Tolls at rates of 1874.	Tolls at proposed rates for 1875.	Loss by the reduction.
Wheat	$695,003.00	$463,335.00	$231,668.00
Corn	500,297.00	333,532.00	166,765.00
Rye	4,504.00	3,002.00	1,502.00
Barley	42,264.00	28,179.00	14,085.00
Oats	52,389.00	34,926.00	17,463.00
Products of wood	718,427.00	538,821.00	179,606.00
Merchandise	60,110.00	30,055.00	30,055.00
	$2,072,994.00	$1,431,850.00	$641,144.00

Total tolls	$2,637,071.00
Total tolls, boats	160,328.00
Tolls on freight	2,476,743.00

Total tolls collected at the tide-water offices in 1874 on freight going West and North	$233,200.72

EXHIBIT C.

Statement of the sums derived from taxes applied during each of the several years to work on the canals, etc.

Date.	Damages and awards.	Extraordinary repairs.	Improvement and enlargement of Champlain Canal.	Extension of Chenango Canal.	Improvement of Black River and reconstruction Oneida Lake canals.	Totals.
					Black River.	
1870	$55,260.04	$1,016,528.73	$80,000.00	$200,000.00	$15,400.00	$1,367,188.77
1871	980,336.47	2,294,028.20	164,713.61	200,000.00	....	3,639,078.28
					Oneida Lake.	
1872	....	470,495.71	402,297.43	175,000.00	$25,000.00	1,072,793.14
1873	772,154.65	1,422,688.41	69,544.75	101,158.68	50,000.00	2,415,546.49
1874	677,675.02	1,763,343.14	....	....	25,000.00	2,466,018.16
	$2,485,426.18	$6,967,084.19	$716,555.79	$676,158.68	$115,400.00	$10,960,624.84
Sinking Fund as per Table No. 1						2,895,615.06
						$13,856,239.90
The taxes levied were in excess of the taxes applied, as shown in this Table						933,608.35
Total taxes levied for canal purposes						$14,789,848.25

EXHIBIT D.

Statement showing the sums derived from taxes to supply deficiencies in the Sinking Funds for payment of principal and interest of the Canal Debt, and to pay principal and interest of the Floating Debt, under the Constitution (Article VII. Section 12).

Date.	Sinking Fund, Article VII. Section 1.	Sinking Fund, Article VII. Section 3.	Sinking Fund, Article VII. Section 12.	Total.
1870	....	....	$227,864.79	$227,864.79
1871	....	....	240,957.65	240,957.65
1872	....	$913,866.65	251,435.90	1,165,302.55
1873	....	....	230,271.15	230,271.15
1874	$195,000.00	575,339.69	260,879.23	1,031,218.92
	$195,000.00	$1,489,206.34	$1,211,408.72	$2,895,615.06

EXHIBIT E.

Distribution of the surplus canal revenues for each of five years, beginning with 1870.

Date.	Surplus.	Distribution.		
		Sinking Fund, Article VII. Section 2.*	Sinking Fund, Article VII. Section 3.	Fund for Support of Government, Section 3.
1870	$569,974.61	$569,974.61	....	....
1871	981,588.68	981,588.68	....	....
1872	1,202,571.35	1,202,571.35	....	....
1873	1,623,286.80	1,500,000.00	$123,286.80	....
1874	1,478,506.08	. . .	1,278,506.08	$200,000.00
	$5,855,927.52	$4,254,134.64	$1,401,792.88	$200,000.00

Sinking Fund, Art. VII. Sec. 2	$4,254,134.64
Sinking Fund, Art. VII. Sec. 3	1,401,792.88
Fund for support of Government, Art. VII. Sec. 3	200,000.00
	$5,855,927.52

* The contribution to this sinking fund in 1873 was a final contribution.

XXXVIII.

When Governor Tilden came into office in 1875, fully one half of the population of the State resided in cities and incorporated villages; and the debt of these corporations amounted to seventy-five dollars for each inhabitant, and the tax imposed upon their real estate was equivalent to fully one third, and in some instances reached to one half of the income from it. The sums thus levied upon the municipal corporations of the State, embracing some two and a half millions of inhabitants, were nearly or quite equal to the total burden of taxation borne by the entire population of the United States of twenty-five millions only twenty years before. The abuses of which these figures are only an imperfect expression had resulted in part from the neglect of the Legislature to discharge the duty imposed upon it by the Constitution of 1846 properly to restrict municipal corporations in their powers of "taxation, of assessment, of borrowing money, of contracting debts, and of loaning their credit," and in part from the as yet unascertained boundaries which separate the provinces of local and State governments. The familiarity with these abuses which Mr. Tilden had acquired in his four years' war with what was commonly known as the Tweed Ring, made him feel that it was one of his first duties to see that the Legislature executed the commands of the Constitution and imposed the restrictions upon municipal corporations contemplated by the Ninth Section of the Eighth Article of that instrument; for to its neglect of these commands was largely due the fact that the debt of New York city, which was less than fourteen millions in 1846, had already swollen to the enormous sum of one hundred and twenty millions over and above its sinking fund.

The questions involved, however, were very complicated, and required more study and deliberation than the members of the Legislature, with their other labors, could well devote to them. Governor Tilden therefore recommended the Legislature to create a commission which should "report to the next Legislature the forms of such laws or constitutional amendments as were required." His motives for this recommendation are set forth at length in the following Message.

MUNICIPAL REFORM MESSAGE.

EXECUTIVE CHAMBER, ALBANY, May 11, 1875.

To the Legislature.

THE Constitution (Article VIII. Section 9) declares that "It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations."

The Convention of 1846, having exhausted its sessions in the consideration of questions upon which it acted, and finding itself unable to deal adequately with the problem of municipal government, on the day before its adjournment charged that duty upon the Legislature. Its primary object was to protect taxpayers in the municipalities against abuses on the part of local governing officials, in taxation for local administration, in assessments for local improvements, in the contraction of municipal debts, and in the loaning of municipal credit.

Those evils had already attracted attention, though they were at that time but in the beginning of the monstrous growth to which they have now attained. In the twenty-nine years which have elapsed, the increase of population in this State has been chiefly in the cities and incorporated villages, until, at the census of 1870, those organizations embraced more than two millions, and now about two millions and four hundred thousand of our people. The course of legislation, so far from obeying the injunction of the Constitution, has been mainly in the opposite direction.

Every annual statute book has been largely occupied with enactments favoring the growth of municipal expenditure, involving taxation, assessments, the contraction of debt, and the loaning of credit. The result, so far as the cities of the State are concerned, is shown by an abstract of reports from the twenty-four cities which have been furnished to me by the local officials, and which I herewith transmit to your honorable body.[1]

The aggregate valuation of property in these cities subject to taxation in 1874 was $1,569,535,074.

The aggregate of city taxation was $36,439,121.

The aggregate of county and State taxation was $13,990,487.

The aggregate of taxation was $50,429,609.

The aggregate debt of these cities was $175,657,267.

Computing the taxation and debt on the population of 1870, adding 20 per cent for subsequent growth, the city taxation was $15.57, the county and State taxation $5.98, and the aggregate was $21.55 for each inhabitant. The city debt was for each inhabitant $75.80.

It must be borne in mind that the proportion of the assessed valuation of real estate to its actual value is fixed in these reports according to a standard from which there is now a large reduction. The average of the assessment is 55.43 per cent of the true value. If the recent fall in marketable values be estimated at one third, the rate of the assessed valuation would be 80 per cent of the actual value. It may be presumed that the values stated in these reports have reference to real property. No allowance is made for the under-valuation of personal property. It is probable that in many instances the taxation imposed upon property in cities has been from one quarter to one third, and by the decline of rents is now one third, and sometimes reaches one half the income of real estate. In 1853, when the population of the United States numbered twenty-five millions, the whole cost of its government was under fifty-five millions of dollars. It will be seen that less

[1] See tables on pp. 136, 137.

than two millions and a half of inhabitants of the cities of New York pay nearly as much taxation as was imposed on twenty-five millions about twenty years ago, for the cost of the army, navy, Indian treaties, and all other expenses of the General Government.

As I remarked in my Annual Message, "in the decade beginning July 1, 1865, the people will have paid in taxes, computed in currency, seven thousand millions of dollars. Three fifths were for the use of the Federal Government, and two fifths for the State and municipal governments. It is doubtless true that some portions of the municipal expenditures were for objects not strictly governmental; but it cannot be questioned that much too large a portion of the whole net earnings of industry and of the whole net income of society is taken for the purpose of carrying on government in this country. The burden could more easily be borne when values were high and were ascending. As they recede toward their former level, the taxes consume a larger quantity of the products which have to be sold in order to pay them. They weigh with a constantly increasing severity upon all business and upon all classes. They shrivel up more and more the earnings of labor. This condition of things ought to admonish us, in our respective spheres, to be as abstinent as possible in appropriations for public expenditures. If the cost of government in our country were reduced, as it ought to be, one third, it would still be larger than a few years ago, taking account of the prices of the products which, in order to pay that cost, we are compelled to convert into money."

The burdens upon taxpayers in cities are exhibited in various ways. Bills for relief by the temporary funding of floating debts; bills authorizing loans to carry on or complete permanent improvements; frequent appeals from taxpayers against the measures of local officials, so numerous that it is quite impossible to arbitrate intelligently between the contending parties, — are among the incidents of the times. Consequences.

The choice between the opposite evils which such cases pre-

sent, is often difficult, and the result unsatisfactory. Works by the localities, as by the State, which ought not to have been undertaken, or which are on a scale too expensive or extravagant, are advanced so near to completion that it is not expedient to refuse the means to finish them, or not proper to overrule the local officials without a more intelligent and assured personal judgment than is possible. It will not do to enforce the rule that loans for permanent improvements shall be accompanied by a sinking fund in many cases where there was no notice. But I have refused to sanction a bill diverting funds raised by permanent loan, and not needed for its original purpose, to current expenses, and I have insisted that in funding floating debts the loans should be merely temporary until the deficiency could be provided for by taxation.

It has been impracticable at once to inaugurate a better system. The whole subject requires a careful and thorough investigation, and the adoption of a fixed policy which shall be known to the people and to which they shall conform.

Judicial remedies.

It is but just to the present Legislature to say, that the three bills which it adopted with great unanimity, providing judicial remedies against frauds, affecting the public moneys or property, are of more value for the repression of the evils of municipal government than all the legislation which has taken place during the twenty-nine years in which the mandate of the Constitution in respect to municipal administration has remained unexecuted. It is true they reach abuses only when extravagance and improvidence degenerate into bad faith or fraud; but they apply to every official of every city, as well as to all State, county, and town functionaries. They apply to every case in which a city official shall, with intent to defraud, wrongfully obtain, receive, convert, pay out, or dispose of any public moneys, funds, credits, or property. They apply to every case in which such an official shall, with like intent, by wilfully paying, allowing, or auditing any false or unjust claim, or in any other manner or way whatever, aid or abet any other person in wrongfully obtaining, receiving,

converting, paying out, or disposing of any public money, funds, credits, or property. They apply also to every person who, dealing with any official, shall, with intent to defraud, wrongfully obtain, receive, convert, pay out, or dispose of any such money, funds, credits, or property. They sweep away the complicated technicalities by which conviction for such offences has hitherto been embarrassed or defeated.

One of these acts provides for every such offence penalties adequate to its enormity, — in imprisonment in the State prison for not less than three nor more than ten years, and a fine not exceeding five times the amount of the loss resulting from the fraudulent act. Another provides for the arrest of the person and the attachment of the property of the wrong-doer. The third of these acts provides for the contingency that the local governing officials shall be able to exercise influence over the officer whose duty it would be to order an action for redress of such a wrong, or whose duty it would be to conduct the suit, or where a local influence might be exercised upon the judiciary; and enables the injured taxpayer to appeal to the State for relief, and gives a method of procedure both rapid and effective.

These laws, when they come to be generally known to the people, cannot fail to exercise a very salutary restraint upon all official persons. They afford a system of remedies hitherto unknown in our jurisprudence, which for their special purposes may well be deemed comprehensive, complete, and effective.

Additional measures of remedy and restraint can, no doubt, be devised in the legislation for local government. The taxpayers should be invested with powers of association and organization for the purpose of investigating the doings of their local officials and enforcing publicity, and for the purpose of instituting suits in the courts to restrain and redress public wrongs, without having recourse to the ultimate resort designed for great cases, in an action by the State. They might also be endowed with capacity to take and

Additional measures.

execute contracts for public work under the supervision of and on the plans fixed by the municipal officers. There is no reason, for instance, why the persons taxable for the improvement of a street should not be allowed to associate, and by their own agents execute the work for which they pay.

Even then a still broader field opens for measures of reform. To define the powers of the local governing officials in matters of expenditure, taxation, and assessment, and to create an effectual responsibility of those officials to the voters of the locality, to establish official accountability on their part, to adopt the machinery most favorable to good administration, — these are the objects which concern 2,400,000 of our people more deeply, perhaps, than any other question of administration that invites the public attention.

Duty of the State.

The duty of the State to establish constitutional provisions and to enact laws protecting, as far as practicable, the inhabitants of cities from abuses of maladministration committed by the local governing officials, and preserving the rights of individual citizens and of the minority as against the majority, is undeniable. That obligation results from the relations which exist between the State in its collective capacity and the local divisions of the State, and between the State and the local officers. In the theory of our civil polity, the sovereignty of the State, subject only to the grants it has made to the Union, resides in the aggregate people of the whole State. All powers vested in the cities and incorporated villages and in the municipal officers, and all powers vested in county and town officers, are theoretically delegations from the people, made by the Constitution or by laws authorized by and enacted in pursuance of the Constitution. At the same time their utility for the purposes of local administration is so recognized by the sentiments of our people that it has come to be justly considered as an obligation to make them and a right to receive them.

The powers intrusted by the State to the local officials are administrative, special, and for local objects. In the most

completely developed municipality they embrace the care of police, health, schools, street-cleaning, prevention of fires, supplying water and gas, and similar matters most conveniently attended to in partnership by persons living together in a dense community, and the expenditure and taxation money for these objects. The rights of persons, property, and the judicial systems instituted for their preservation, — general legislation, government in its proper sense, — these are vast domains which the functions of municipal corporations and municipal officers do not touch.

Progress of local self-government.

The first Constitution of this State, formed in 1777, provided for the appointment and removal of all local officers by a council composed of the governor and four senators chosen every year by four subdivisions of the Assembly. The system continued until it involved the selection of fifteen thousand officers, civil and military, when our population was but one third of its present magnitude. Every year assembled in Albany, from all parts of the State, candidates and their friends for a general scramble. The strifes of parties were intensified by personal selfishness, and aggregated in a single centre. The evils of the system contributed to the calling of a Convention which formed the Constitution of 1821.

That instrument substituted election by the people of the localities or appointment by the local authorities, in respect to a large share of the local officers. The question of how to disperse the appointing power, and yet preserve accountability to the State, was very thoughtfully considered by the foremost statesmen. Its solution was found in a device proposed by Daniel D. Tompkins, which was to separate the power of appointment from the power of removal. The case of the sheriff excited the most solicitude, and was elaborately discussed. It was disposed of by giving the election to the people of the county, but reserving to the State the power of removal for cause, to be exercised by the governor. The same method was applied to county clerks.

The Constitution of 1846 extended the system to district attorneys and coroners. It has been applied by constitutional provision or by statute to many other cases, and is now in operation as to the principal officers of the counties, probably embracing five hundred in number. A procedure has grown up in the nature of a summary trial.

The Convention of 1846 carried much farther its dispersion of the power of choosing local officers. It even allowed an election by districts of judges of the Supreme Court having general State jurisdiction; but it provided that they should be removable by impeachment, and also by the two Houses of the Legislature. County judges, surrogates, and all other judicial officers elected within the county, and all commissioned officers of the militia who are elective, were made removable by the Governor and Senate. Indeed it is a characteristic peculiarity of the present Constitution to distinguish between the power of electing or appointing an officer and the power of holding him to an account. In the words of my Annual Message, "it is while dispersing the one to the localities to reserve the other to the State, acting by its general representatives and as a unit; to retain in the collective State a supervisory power of removal in addition to whatever other accountability may result to the voters or authorities of the locality from the power to change the officer at the expiration of his term or from special provisions of law. The two ideas are not incompatible; on the contrary, each is the complement of the other. Such dispersion of the appointing power has become possible only because these devices have been invented to preserve accountability to the State."

Through all our constitutional history the tendency has been to enlarge the power of localities in the management of such local affairs as are usually intrusted to their administration. This policy has been developed not merely by conferring the power of local election or of appointment by local authority of the officers on whom the duties of local administration are conferred, but also by the gradual enlargement of those duties.

The political philosophy which has inspired this policy is founded on the theory that the individual is the best judge of whatever concerns himself exclusively. It aims to enlarge the domain of the individual conscience and judgment as much as practicable, and to limit and simplify the action of the government in the affairs of individuals. A deduction from this philosophy is that where individuals are associated in a city or in an incorporated village, or even in those subdivisions of the State that are termed in the law *quasi* corporations, there are certain powers of administration, mainly concerning the individuals so associated, which may be safely intrusted to their management under a proper organism, and in which they will be the best judges of the measures most wise and most adapted to their actual condition. The development of this system belongs to the sphere of practical government, and is to be worked out progressively. Of the general truth of the theory and of the wisdom of this system I entertain no doubt; and I have always endeavored to promote its wise application, and to try, by its principles, the measures which have been presented in its name.

Its principle.

The essential conditions of local self-government, or home rule, in respect to those powers of administration which are intrusted to the locality are, —

Its conditions.

1. That there be an organism under which the elective power of the people can act conveniently and effectively, and can exercise an actual control at one election over those who represent it in the local administration.

2. That in voting upon the administration of local affairs, the popular attention and the popular will be freed, as far as possible, from disturbing elements, especially from complications with State and National politics.

The ancient system, which exists in the country and worked well in New York for a generation, by which municipal elections were held at a time intermediate of the annual State and National elections, has always commended itself to my judgment as of great utility and value.

3. That the popular will, as declared at the elections, should be protected, as far as possible, from the effects of undue concentration of power, patronage, and the means of corrupt influence.

4. That while the responsibility of public officers to the voting citizens be made effective, and they be made amenable to the taxpayers of the locality through the courts, accountability to the State be preserved through regular methods, so that the existence of such appeal of the minority and of individuals against the wrongs of governing officials will render unnecessary and inexcusable the frequent legislative interventions which have practically destroyed all self-government, created more local mischief than they have remedied, and have grown to be prolific of abuse and corruption in the legislative bodies.

So far from official accountability in regular forms being an abridgment of local self-government, it is the foundation on which this system can alone be built up. Arbitrary or irresponsible power finds no place in our popular system of government. The public officers are the trustees of the people. The majority are trustees for the whole, for the minority, and for each individual. At the present time the Senate and Assembly and the governor are largely occupied by attention to measures which are in the nature of appeals from the local administrative officials. Legislation is daily asked for, not merely for the purpose of enlarging or modifying the powers of those officials according to the local wants, but for overruling their judgment, correcting their errors, and redressing their wrongs. The granting or refusing of such legislation often involves questions of extreme difficulty, to investigate and decide the merits of which is quite beyond the power of the legislative bodies or the governor, especially in the multitude of topics that accumulate in the closing weeks of the session.

Experience of the metropolis.

The most instructive chapter on the subject of municipal government which is to be found in our civic history is the experience of our great metropolis, which stands so conspicuous, not only in this State, but throughout the Union and before the world.

As great cities are rapidly growing up in other parts of the State, we may study that experience with advantage. Anterior to the Constitution of 1846 the practical governing population of this State was agricultural, and comparatively little attention had been paid to municipal government. In that instrument, while county and town systems received comparative protection, the charters of cities and incorporated villages were left almost absolutely within the control of the Legislature.

Charter of 1830.

The city of New York had gone on under a simple popular government which had many elements of great value. Substantially, the administration was conducted by the mayor and two boards of the common council, their committees, and the officers appointed by them. The elections were separate, were held in the spring of the year, and were annual. Popular opinion easily became effectual in controlling the policy of government. A political revolution was frequently produced by the charge of excessive expenditure on the part of the city government. The liability to change and the exposure to publicity made any elaborate and prolonged plans of plunder unsafe, if not impossible. It is not meant that the deterioration that afterward ensued is to be ascribed wholly to the new methods of government adopted.

Injurious changes.

Doubtless important changes have occurred in the conditions under which the municipal government is carried on. Changes in the population; a loss of the habit of acting in city affairs, resulting from the inability to act with effect during twenty years in which the elective power of the people has been nugatory; decay of civic training; forced exclusion and voluntary withdrawal from participation in local government for a generation; the absorption of the public attention in the controversies of national politics, leading to an almost total neglect of the questions of administration on which the competitions of politics formerly turned; the vast disproportion in the numerical strength of parties formed on sectional questions, — these are causes which make the machinery of popular government work less favorably than before. But

it cannot be doubted that various changes, originating in a false theory of government and continuing through a series of years, by which the legislative power was very much weakened, and the spending officers became not only exempt from any regulation by the legislative bodies and practically irresponsible, but by means of their patronage acquired practical control in the government, and a complexity of system by which the elective power of the people became ineffectual, were steps in a downward progress.

Interference with local government.

The abuses and wrongs of the local administration which found no redress generated a public opinion under which appeals were made, in the name of reform, for relief to the legislative power at Albany; and it was found that an act could be easily contrived whereby one official could be expelled from office, and, by some device, a substitute put in his place. It was found likewise that the powers of an office could be withdrawn and vested in a different officer or in a commission, the selection of which could be dictated from the State Capitol.

It is the experience of human government that abuses of power follow power wherever it goes. What was at first done, apparently at least, to protect the rights of the minority or of individuals, — what was first done for the sake of good government, — came in a little time to be done for the purposes of interested individuals or cliques. Differing in politics as city and State did, party selfishness and ambition grasped at patronage and power, and the great municipal trust came to be the traffic of the lobbies. Institutions wholly unfit to answer any use or object of government in a civilized community, and by virtue of their structure capable of nothing but abuses growing into crimes against the communities in which they existed, such as the Board of Supervisors, erected in 1857, came into existence under the motive power of the division of the spoils, which they partitioned between their contrivers, combining equal numbers from both parties.

The consummation of this deceptive system was in the

charter of 1870, which was enacted in the name and under the pretence of restoring local self-government. It was a long document, full of minute regulations copied from preceding laws; but its vital force and real object resided in a few sentences. It totally stripped the elective councils of all legislative power, and covered up that design by several pages, in which it enumerated ordinances the councils had, from time immemorial, power to establish, but which had never been thought worthy of mention in any previous act of legislation.

Charter of 1870.

It practically vested all legislative power in the mayor, comptroller, commissioner of public works, and the commissioner of parks. It vacated the offices of the existing incumbents at the end of five days, and provided for the appointment of their successors by the then existing mayor, who was one of the quartet. Every device to make these four officers totally irresponsible was carefully adopted. The existing law, which had stood for many years, by which the mayor, comptroller, and street commissioner had been removable by the governor, as in the case of sheriffs, was repealed. A restoration of that power of removal as regards the mayor was demanded in the following year, and in 1873 was accorded, with the unanimous consent of both political parties.

This charter, which practically put in abeyance the elective power of the people of the city of New York for years, and set up an oligarchy of four persons, who, aided by a subsequent amendment, had all powers of expenditure and taxation, of legislation and administration, over a million people, was enacted under the pretence of restoring local self-government. It was objected at the time that those officers so appointed were to all practical intents and purposes a commission, just as under the system which was to be abolished; that they were in effect as much appointed by the State Legislature as if their names had been inserted in the law; and that the elective power of the people was annulled, and rulers were set over them without their consent.

How unanimously that charter passed, by what barter of the municipal trusts and by what corrupt use of municipal money, and how, within a month, the officers placed by a legislative act, without the intervention of a new election, in supreme dominion over a million of our people, divided up four millions of a pretended audit of six millions, are now matters of history. These were the fruits, not of a popular election, not of local self-government, but of the culmination of a system under which the governing officials had been practically appointed by legislative acts of the State. The device of creating a special appointing power to do what was desired by a clique or party, or was agreed upon beforehand, was not perfectly new, it had been frequently used in a smaller way.

The contagion of such practices threatens to extend to other cities. If public opinion and the state of the Constitution and laws allow it, the temptation to transfer the contest for offices from the local elections to the legislative halls will arise as often as aspirants are defeated and can expect to recover there what they have lost at home. There is no remedy but in the refusal to give to such devices the sanction of law, until constitutional provision shall give permanency to the methods of appointment and removal in municipal governments.

1873. The charter of 1873, while it contains many provisions that are valuable, still leaves to the heads of departments the power to create officers and fix their salaries, — a power which no one has ever thought of conferring on the governor or the comptroller of the State, who are properly subject to the specific and minute regulations of law; and it leaves all the power of levying taxes, spending money, contracting debt to a large extent, and all the powers of legislation in the hands of the mayor, the comptroller, the president of the board of aldermen, and the president of the department of taxes.

In the hands of every one of the present incumbents we have the satisfaction to believe that the interests of the people are perfectly secure; but we ought to consider what manner of institutions shall be formed for the long future, with its varied

changes of official persons, — whether we will continue such vast powers, having no parallel in any government.

The charter of 1873 sought to shun the defect of the charter of 1870 in respect to removal. It restored the power of the removal of the mayor by the governor; it provided for the removal of heads of departments by the mayor, subject to the written approval of the governor, — thus establishing an artificial check upon an artificial system, aiming to secure independence, except in case of official misconduct, on the part of the members of the body on which it conferred such extraordinary powers, and shrinking from converting an oligarchical into a despotic system.

At the present session various propositions have been introduced, and others have been suggested, for changing the powers and patronage of the city government. None of them have come before me for official action. No comprehensive or well-considered system has been proposed. Hasty and partial changes by laws which, however plausible on their face, cannot be judged of except through an acquaintance with the whole mass of preceding legislation upon which they operate, and likely to produce results not foreseen by their authors, were not desirable.

In the better times of government and legislation in this State, when the traditions of popular rights were respected, the formation of a charter for a great city was a matter of deliberation, and the people to be affected were fully consulted. Generally a convention of their representatives was held to consider the matter, and full opportunity was given to discuss and perfect so important an instrument. The people were allowed to elect their chief officers with a knowledge beforehand of the substantial nature of the powers these officers would exercise. The idea of working a total revolution in the depositories of governmental powers by a legislative act, without the intervention of an election that should allow the people to say on whom new and vast powers should be conferred, would have been treated as a gross invasion of the rights of the people.

Even in restoring the legislative power to a legislative department of the city government, the new legislature ought to be formed according to the best traditions and the best experience of American government; and the people ought to be allowed to choose it at a fresh election, and in contemplation of the new powers conferred, which amount to a new creation.

I am not inclined to tamper by inconsiderate and fragmentary legislation with the government of the metropolis or of the other great cities of the State, but I feel profoundly the necessity of attention to the structure, power, and duties of those governments; and when we do constitute a new system I am anxious that it should answer the just expectations of the people. There is no subject which to-day interests them more deeply; no subject more complicated or more difficult of solution; none which requires more thoughtful attention, more thorough discussion, to mature results with which we shall be satisfied in future years. There is no case in which it is more your duty and mine to say to those who seek changes: "You must found your claim to the advantages of political and official power upon the best promise of good government in the nature of the institutions you propose. You must accept official accountability as a condition of official trust."

I have set forth some of the evils which have followed the violation of sound principles of government in the city of New York, not only to show the wrongs to which the people of that municipality have been subjected, but also to illustrate the dangers which threaten other cities, unless we can fix sound principles in the minds of our people and make them operative in the legislative bodies or intrench them in the Constitution.

The people comprised in the cities of the State, exclusive of New York, are to-day more numerous than the inhabitants of the metropolis. They form a larger portion of the population of the State. This is exclusive of the incorporated villages.

If local self-government or home rule is to be secured to them, and they are to be protected from the abuses which

naturally happened earlier in New York, it must be done by the establishment of a general system which shall be respected by the people and by their representatives. The Legislature is burdened by numerous applications for changes in local laws, the operation of which on the pre-existing mass of legislation cannot easily be ascertained. This obscurity is often a cover under which the objects of selfish individuals or cliques or partisan purposes are concealed. Every revolution of politics in the locality or in the State is followed by efforts to change the governing power or to effect a new disposal of offices and patronage in the locality. Such demoralizing efforts could not readily be effectual if well-defined principles of government pervaded all municipal charters. Diversities will no doubt continue to be unavoidable; but the advantages of general laws over special legislation now recognized in our political theories and maxims should be extended as far as practicable to our city governments. Whatever can be accomplished by legislation to correct the evils growing out of the discordant charters which now exist, and to infuse into them general principles that shall become a guide to future legislation, ought to be done. But the only effectual remedy is in an amendment of the Constitution fixing the general plan of municipal government, especially in respect to the appointing power, and at the same time establishing on a durable basis official accountability.

With a view of calling public attention to this subject and of laying the foundation of a plan of legislation and of constitutional amendment, I recommend the appointment of a commission who shall report to the next Legislature the forms of such laws or constitutional amendments as are required. If you do not think it advisable to constitute such a commission, the revisers of the statutes might be instructed to collate and report upon the condition of the laws relating to the cities, in aid of future action by legislation or constitutional amendment.

City.	Population, 1870.	Assessed valuation of real property.	Assessed valuation of personal property.	Assessed valuation, Total.	Per cent of assessed to real value.
New York	942,292	$881,547,995.00	$272,481,181.00	$1,154,029,176.00	60
Brooklyn	396,099	.....	.....	220,272,797.00	65
Buffalo	117,714	.....	.....	39,716,590.00	33⅓
Albany	69,422	30,364,389.00	4,289,050.00	34,653,439.00	40
Rochester	63,522	13,352,600.00	905,000.00	14,257,600.00	25
Troy	46,465	11,608,290.00	3,833,555.00	15,441,845.00	33⅓
Syracuse	43,051	10,728,554.00	1,528,383.00	12,256,937.00	30
Utica	28,804	.....	.....	5,499,065.00	25
Kingston	21,943	2,573,540.00	1,047,900.00	3,621,440.00	20
Oswego	20,910	5,651,965.00	893,577.00	6,545,542.00	50
Long Island City	20,274	4,316,275.00	190,750.00	4,507,025.00	25
Poughkeepsie	20,080	3,497,725.00	1,939,275.00	5,437,000.00	...
Yonkers	18,357	7,612,700.00	430,050.00	8,042,750.00	...
Auburn	17,225	10,260,095.00	1,926,700.00	12,186,795.00	...
Newburgh	17,014	.....	.....	5,628,735.00	25
Elmira	15,863	4,064,102.00	495,550.00	4,559,652.00	33½
Cohoes	15,357	.....	.....	3,492,944.00	...
Binghamton	12,692	.....	.....	2,546,726.00	25
Lockport	12,426	.....	.....	3,041,155.00	33⅓
Schenectady	11,026	.....	.....	2,928,494.00	40
Rome	11,000	.....	.....	1,502,132.00	20
Ogdensburgh	10,076	1,536,753.00	591,070.00	2,127,823.00	30
Watertown	9,336	.....	.....	2,111,221.00	33⅓
Hudson	8,615	.....	.....	5,128,191.00	50
Total	1,949,563	.....	.....	$1,569,535,074.00	...

City.	City Tax.	Per cent of city tax on assessed value.	City tax per head.*	State and County Tax.	Total.	Per cent of total tax on assessed value.	Total tax per head.*	Debts.	Debt per head.*
New York . .	$24,639,335.22	$2.13	$21.79	$7,673,481.70	$32,312,816.92	$2.75	$28.58	$115,187,980.00	$101.87
Brooklyn . .	5,002,573.85	2.26	10.52	2,819,049.94	7,821,623.79	3.55	16.43	35,048,621.52	73.73
Buffalo . . .	1,698,148.23	4.27	12.02	563,753.77	2,261,902.00	6.14	16.01	6,227,563.90	44.07
Albany . . .	1,203,861.11	3.47	14.46	524,024.43	1,727,885.54	4.98	20.75	3,507,000.00	42.11
Rochester . .	762,694.17	5.35	10.01	323,243.53	1,085,937.70	7.61	14.24	4,729,498.00	62.04
Troy	510,000.00	3.30	9.16	284,125.12	794,125.12	5.14	14.24	738,550.00	13.24
Syracuse . . .	373,063.32	3.43	7.22	343,322.77	716,386.09	5.84	13.90	1,489,000.00	28.82
Utica	243,442.82	4.42	7.04	137,792.34	381,235.16	6.93	11.05	844,500.00	24.42
Kingston . .	60,534.57	1.60	2.30	169,309.21	229,843.78	6.35	8.72	684,580.00	26.00
Oswego . . .	196,997.51	3.00	7.85	170,735.87	367,733.38	5.62	14.65	210,400.00	8.38
Long Island .	193,042.55	4.28	7.93	87,886.99	280,929.54	6.23	11.53	900,000.00	36.99
Poughkeepsie	287,789.95	5.25	11.94	79,548.42	367,338.37	6.75	15.24	2,002,297.70	83.09
Yonkers . . .	265,069.18	3.29	12.03	85,771.51	350,840.69	4.36	15.93	1,135,566.17	51.55
Auburn . . .	185,025.00	1.50	8.95	113,299.79	298,324.79	2.44	14.43	550,000.00	26.61
Newburgh . .	102,925.49	1.87	5.04	90,519.17	193,444.66	3.42	9.47	318,600.00	15.60
Elmira	173,418.28	3.80	9.11	90,748.39	264,166.67	5.79	13.88	311,610.00	16.37
Cohoes	78,891.81	2.25	4.28	57,360.10	136,251.91	3.90	7.41	152,000.00	8.23
Binghamton .	120,615.36	4.73	7.92	55,112.53	175,727.89	6.86	11.55	342,500.00	22.48
Lockport . .	26,768.29	.88	1.79	49,641.93	76,410.22	2.51	5.12	No debt.	.....
Schenectady .	69,967.14	4.38	5.29	36,899.02	106,866.16	3.65	8.08	111,000.00	8.44
Rome	60,452.68	4.24	4.58	41,822.79	102,275.47	6.80	7.76	220,000.00	16.66
Ogdensburgh	56,638.59	2.66	4.68	50,657.25	107,295.84	5.42	8.90	185,000.00	15.30
Watertown .	64,000.00	3.78	5.69	91,409.00	155,409.00	7.36	13.83	406,000.00	36.12
Hudson . . .	63,866.42	1.24	6.18	50,972.00	114,838.42	2.24	11.11	355,000.00	34.32
Total	$36,439,121.54	...	...	$13,990,487.57	$50,429,609.11	...	.....	$175,657,267.29	.....
Average . . .	.....	...	$15.57	.....	.....	...	$21.55	.....	$75.80

* Computed upon estimated population in 1875, obtained by adding 20 per cent to the census of 1870.

XXXIX.

At the fall election, when Mr. Tilden was chosen governor, the people also ratified an amendment to the State Constitution which conferred upon the governor, in addition to his former power of vetoing a whole bill, a power to veto or withhold his assent from any one or more items of an appropriation bill, while approving of the rest. The following veto-messages and memoranda were the first delivered or filed under this constitutional amendment.

VETO-MESSAGES IN 1875.

EXECUTIVE CHAMBER, ALBANY, April 12, 1875.

To the Senate.

I RETURN herewith, without my approval, Senate Bill No. 27, entitled "An Act to change the name of the Black River Insurance Company of Watertown, New York."

It may perhaps be questionable whether a corporation is a person within the meaning of the first subdivision of Section 18 of Article III. of the Constitution; but it seems to me plain that the object sought to be accomplished can as well be attained either by an amendment to Chapter 322 of the Laws of 1870, authorizing corporations to change their names, or by a general act specially applicable to insurance corporations.

EXECUTIVE CHAMBER, ALBANY, April 12, 1875.

To the Senate.

I return herewith, without my approval, Senate Bill No. 67, entitled "An Act for continuing and regulating a ferry across the Hudson River in the town of Phillipstown, in the County of Putnam."

This Bill authorizes the Garrison and West Point Ferry Company to maintain a ferry between Garrison Station and the West Point Dock, and prohibits all other persons from conveying passengers or goods for hire across the river between any point on either side within half a mile of a line drawn from the ferry slip at Garrison to the West Point Dock, under a penalty of five dollars for each offence.

It seems to me plain that this Bill is in conflict with the provision of Section 18 of Article III. of the Constitution, which prohibits the Legislature from passing any private or local bill granting to any private corporation, association, or individual any exclusive privilege, immunity, or franchise.

EXECUTIVE CHAMBER, ALBANY, April 15, 1875.

To the Senate.

I return herewith, without my approval, Senate Bill No. 109, entitled "An Act to amend an Act entitled an Act to authorize the consolidation of certain railroad companies, passed May 20, 1869."

Section 1 of the Act sought to be amended authorizes any railroad corporation incorporated under the laws of this or any other State, operating a railroad or bridge wholly or partly within this State, to consolidate with any other railroad company organized under the laws of this or any other State, where the two railroads will form a continuous line.

The Bill now before me proposes to amend that section so as to authorize any railroad corporation organized under the laws of this State or of the State of Pennsylvania, either operating or constructing a railroad or bridge wholly or partly within the State, to consolidate with another company formed under the laws of this State or of the State of Pennsylvania.

This amendment is doubtless proposed to meet a special case, so as to allow the consolidation of two corporations, although the roads of neither are in operation; but it restricts the operation of the existing statute so as to prevent the consolidation of two railroad corporations, although the roads of both are in operation, unless each of such corporations was organized under the laws of this State or of the State of Pennsylvania.

I am unable to see any good reason for such a discrimination between railroad corporations of the State of Pennsylvania and those of other contiguous States.

EXECUTIVE CHAMBER, ALBANY, April 21, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 172, entitled "An Act to authorize the increase of the capital stock of the Richmond County Storage and Business Company." The Company named in the title of this Bill was incorporated by Chapter 684, Laws of 1870, with a capital of one hundred thousand dollars, with power to increase the same to five hundred thousand dollars.

I am informed that this corporation has never done any business under its charter, or exercised any of the powers thereby conferred upon it, except that it has perfected its organization. The primary object of this Company is "to receive on storage or deposit any goods, wares, merchandise, or property for safe-keeping or shipment, and to make advances thereon or on the pledge thereof, to transact all kinds of business usually done by warehousemen and lightermen, and to collect dockage, wharfage, storage, and lighterage for the use of their property and the machinery connected therewith, or the lighters employed by them;" but it is also authorized by its charter to "guarantee the payment of promissory notes, bills of exchange, bonds, accounts, claims, annuities, mortgages, choses in action, and evidences of debt, and the punctual performance of all contracts and obligations upon such terms as are allowed by law;" and also "to receive and take the management, charge, or custody of real or personal property and choses in action;" and to "advance moneys, securities, or credits thereon on such terms as are allowed by law," whether such securities, contracts, or property have any connection or relation to the business of storage, dockage, or lighterage, or not.

The Bill now before me authorizes the increase of the capital stock of the Company to the extent of one million dollars. I cannot sanction any increase of the capital stock of a corporation whose powers are so diverse and extensive. On the other hand, I recommend the modification or repeal of its charter.

EXECUTIVE CHAMBER, ALBANY, May 3, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 375, entitled "An Act to amend Section 10 of Chapter 830 of the Laws of 1873, entitled an Act to legalize the adoption of minor children by adult persons."

The Act of 1873, which the Bill proposes to amend, defines the adoption for which it provides as a "legal act whereby an adult person takes a minor into the relation of a child, and thereby acquires the rights and incurs the responsibilities of a parent in respect to such minor." It prescribes the method whereby the adoption is to be accomplished; concerning which it is only necessary to say here, that if the child is upward of twelve years of age, his consent is required; that the consent of parents is also required, but if both parents are dead, or the survivor has been guilty of certain acts of misconduct specified in the Act, or is incompetent to consent, it is sufficient to procure the consent of "an adult person having the lawful custody of the child;" that the persons required to consent are to appear before the county judge, who, if he is satisfied that "the moral and temporal interests of the child will be promoted by the adoption," must make an order "directing that the child shall be regarded and treated in all respects as the child of the person adopting." Then follows the tenth section, declaring that the child and the person adopting "shall sustain to each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation excepting the right of inheritance, except that, as respects the passing and limitation over of real and personal property, under and by deeds, conveyances, wills, devises, and trusts, said child adopted shall not be deemed to sustain the legal relation of child to the person so adopting."

The Bill now returned proposes to strike out all of the tenth section after the word "relation," so that the adoption will thenceforth have precisely the same legal effect as if the child and the person adopting were parent and child by blood.

The exceptions created by the provisions proposed to be stricken out are of two different descriptions.

The first prevents the application to the relation by adoption of the rules of law regulating the descent of real property and the distribution of personal property. If the only effect of striking out this exception would be to enable the adopted child to inherit or take as next of kin from the parent adopting in like manner as a child by blood, the change might be unobjectionable. It would generally be only carrying out the presumed intent of the person adopting in entering into the relation. Whether the child would be entitled to inherit from the collateral relatives of the parent adopting, is a very grave and doubtful question, which ought to be settled by the statute. But it is certain that the rules of descent and of distribution, as between the parent adopting and the child, would work both ways, — that the parent would inherit from the child as well as the child from the parent. It appears to me manifestly unjust and inexpedient to provide that the adopting adult shall inherit and take as heir and next of kin from the adopted minor. If the law should be thus changed, an unprincipled or even a selfish man or woman, notwithstanding the guards thrown around the child by the statute, might easily, in many cases which may be suggested, cause all the forms of the statute to be complied with in such a manner as to adopt as his own child a rich orphan minor for the purpose of inheriting from him. If the child is under twelve years of age the adopting parent may be substituted as his heir and next of kin, if this Bill becomes a law, without his consent; and even supposing that the consent of a child of upward of twelve years ought to carry any moral or legal weight in a question of property, it would be irrevocable till he attains majority, and then only by means of the positive act of making a will. On the other hand, on the next day after the adoption, the adopting parent may by a will cut off the child from any share in his property. But apart from this consideration, the proposed Bill would thus operate unjustly; it would, in case of the death of a child

before attaining the age when he can make a will, or after that age if he die intestate, cut off his natural heirs and next of kin, who might be his own infant brothers and sisters by blood. The Legislature ought not to enable a child who has not legal capacity to make a will, to change the course of succession to its real and personal property by means of a legal proceeding taken by him in connection with interested strangers; still less ought the State to allow such a change to be effected by the act of strangers alone.

The second exception which this Bill proposes to strike out prevents the fictitious relation of parent and child created by the adoption, from affecting the passing and limitation over of real and personal property. This qualification was also inserted for the protection of third persons; its effect is to prevent the intent of a testator or grantor of property from being defeated in consequence of the adoption by the diversion of the property from the direction which he intended. The clause operates in both ways, — it prevents a diversion of property limited over after the death either of the adopting parent or of the adopted child, and in either aspect it is eminently just and proper, and should be retained. From the nature of the case, the person who creates an intermediate estate with a limitation over does not intend that the holder of the intermediate estate shall absolutely dispose of it. He generally means that it shall go to his own blood, and his intention is defeated if a stranger is interposed. For instance, a testator leaves an estate to his son for life, with remainder to the children of the son, or, in default of such heirs, to another son and the latter's children. The first taker, having no children, adopts a child under this Act, perhaps in consequence of a family quarrel, and for the express purpose of disappointing his brother's children. Can there be any doubt that the testator's intent is defeated? The consequences which would ensue if the child adopted was the holder of the lesser estate are of the same general character. Again, the abrogation of the exception now under consideration may work an injury to the adopted child by depriving him of

an estate limited to him as the child or an heir of his parent by blood. It would at all events raise a difficult question for decision by the courts.

The Bill is unnecessary for any purpose, except to protect the adopted child of a person neglecting to make a will. Though there might be a certain small convenience in providing by law against such an oversight or neglect in such a possible case, the motive is totally inadequate to call for or justify a fundamental change in the laws which define the relations of kindred, and their rights in respect to property.

The rules of our customary jurisprudence which regulate these relations and the rights of property incident to them are the gradual growth of many centuries, and have become a refined and complicated system, adapted by the best intellects to the wants of our society in the infinite diversity of conditions which experience has developed. Such a change as is proposed by this Bill would be likely to produce many consequences not foreseen by its projectors, and should not be adopted without a consideration and discussion to which it has not been submitted. The people have become acquainted with the laws which have existed from time immemorial, and are accustomed to act with reference to them. A deviation to meet a special and peculiar instance may be worked out by affirmative acts. It would be unwise, in order to accommodate such a case, to enact a revolution of legal rules which would require a series of affirmative acts to produce the results which the people are accustomed to regard as a matter of course.

EXECUTIVE CHAMBER, ALBANY, May 3, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 262, entitled, "An Act supplementary to Chapter 200, Laws of 1874, entitled an Act to authorize the appraisal and sale of leased fine salt lots on the Onondaga Salt Springs Reservation by the Commissioners of the Land Office, and authorizing the

Commissioners of the Land Office to exchange lands on said reservation."

The constitutional provision regulating the lands owned by the State contiguous to the salt springs is as follows: —

"The Legislature shall never sell or dispose of the salt springs belonging to this State. The lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished."

The first section of this Bill reads thus: —

"If any lands heretofore acquired by the State on the Onondaga Salt Springs Reservation as lots on which to manufacture fine salt, shall have been so acquired by gift or grant, without compensation to the original owner or owners thereof by the State, and if the commissioners of the land office and the superintendent of the Onondaga Salt Springs shall at any time determine and officially certify that any of said lots are no longer necessary for the purpose of manufacturing fine or boiled salt thereon, the commissioners of the land office shall not sell the same, but may in their discretion reconvey, without cost to the State, such lot or lots to the original owner or owners, their heirs or assigns, without cost or expense to the State, and discharged from all obligation, expressed or implied, on the part of the State to furnish said lot or lots with salt water from the public pumps."

The words "gift or grant without compensation" will be construed to mean a conveyance for which no money has been paid by the State. The lands may, however, have been conveyed in consideration of advantages to the grantors other than the receipt of money. It may have been greatly for their interest to convey these lands to the State, and to take back leases with "the obligation on the part of the State to furnish said lot or lots with salt water from the public pumps." It can hardly be believed that the lands were given to the State in pure generosity, with a view simply to increase the public domain. Their former owners converted them from private

lands into State lands in order to reap some benefit from this change of title; and this benefit they have no doubt enjoyed. There is probably no more reason why the State should give away these lands to their former owners than to any one else; nor any more reason why it should give them away at all, than any other property it owns.

The Constitution provides that these lands may be sold, not given away; that they may be sold only for the purpose of investing the proceeds in other lands; and that the aggregate of these salt lands shall not be diminished. The Bill provides that the lands shall not be sold, but may be given away; there will be no proceeds to be re-invested, and so the aggregate of lands will be diminished.

The Constitution speaks of the "lands contiguous thereto and which may be necessary and convenient for the use of the salt springs." This Bill, in providing for an official determination which is to precede and to be relied on to justify the proposed reconveyance by the State, requires a certificate only to the effect that "said lots are no longer necessary for the purpose of manufacturing fine or boiled salt thereon." The lands may, notwithstanding, be necessary and convenient for coarse salt or for other purposes connected with the manufacture of salt. A reference to Section 44 of Chapter 346 of the Laws of 1859 will show that if the State provide for vacating any leases before their expiration, as it must do if it reconveys the lands and is discharged from all obligation to furnish the lots with salt water, claims are likely to arise against the State for the value of any salt manufactories erected by the lessees thereon. For protection against such claims the Bill makes no provision.

This Bill is open to the objection that if its purposes are carried out, wrong is likely to be done to the rights and interests of the State. Moreover it conflicts, in my judgment, with the spirit and intent, if not with the letter, of Section 7 of Article VII. of the Constitution.

EXECUTIVE CHAMBER, ALBANY, May 3, 1875.

To the Assembly.

I return, without my approval, Assembly Bill No. 199, entitled "An Act to provide for the recording of certain decrees in partition suits now remaining on file in the office of the Clerk of Onondaga County, and for the alphabetical indexing of certain records of deeds and mortgages in the office of said clerk."

The first section directs that all decrees making partition of real estate, now on file in the Clerk's office of Onondaga County, shall be recorded. The provision is a very proper one, but it ought obviously to be extended so as to cover as well decrees of partition which may hereafter be filed, as those already filed. The provision, moreover, ought to be general, applying alike to all the counties of the State.

The second section directs a general alphabetical index to be made of the grantors and grantees in all instruments now recorded in said office affecting real estate. Of the necessity for this work the local authorities are the best judges, and the expense is a charge upon the county. Assuming that the Board of Supervisors have not already, under Section 7 of Chapter 855 of the Laws of 1869, full authority in the premises, any law now made on the subject ought to leave it to their discretion to order the work.

The Legislature now have under consideration a general Bill conferring further powers on the Boards of Supervisors. It would be better in that Bill to give all the authority necessary in such instances as this, so that matters so obviously of local interest and of local expenditure as this is may not be pressed upon the attention of the Legislature, taking up time which should be given to the general business of the State.

I feel confident that on reconsideration the Legislature will agree with me in these views.

EXECUTIVE CHAMBER, ALBANY, May 3, 1875.

To the Assembly.

I return herewith, without my signature, Assembly Bill No. 100, entitled "An Act to enable married women to release and to confirm releases of dower and inchoate rights of dower in certain cases."

The second section of this Bill confirms every release of an inchoate right of dower heretofore made by a married woman during coverture to a person in possession of real property under title derived from the husband, although the husband has not joined in such release; and the Bill contains no clause saving existing rights, even where an action is actually pending. It is well settled that such a release is absolutely void, in the present state of the law in this State.

This Bill, therefore, is intended to validate conveyances which are now invalid, and to make releases effectual which are now ineffectual. It is therefore certainly improper, and probably unconstitutional.

EXECUTIVE CHAMBER, ALBANY, May 5, 1875.

To the Assembly.

I return, without my approval, Assembly Bill No. 470, entitled "An Act to reorganize the Village of Canajoharie." This Bill expressly constitutes the inhabitants of a particular territory a body politic and corporate, and is a complete village charter. Although there is at present a municipal corporation covering the same territory and bearing the same name, it seems to me doubtful whether this Bill does not contravene the spirit, if not the letter, of the provision of the Constitution which forbids the passage of a local act incorporating a village.

It differs in many important respects from the present charter, and contains some provisions which seem to me objection-

able. I think these changes should not be made without the approval of the electors of the village, to whom, as I am informed, the Bill has never been submitted.

EXECUTIVE CHAMBER, ALBANY, May 10, 1875.

To the Senate.

I return herewith, without my approval, Senate Bill No. 160, entitled "An Act to incorporate the Rescue Hook and Ladder Company of Tonawanda, Erie County, New York."

If the members of this Company wish to become incorporated, they should avail themselves of the provisions of Chapter 397 of the Laws of 1873, which provides fully for the incorporation of fire, hose, and hook and ladder companies.

EXECUTIVE CHAMBER, ALBANY, May 11, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 388, entitled "An Act to regulate coroner's inquests in the City and County of New York, and to provide for the payment of services rendered by scientific persons as experts."

This Bill is so loosely drawn as to open the door to unnecessary and extravagant expenditure, and to the recovery of stale, doubtful, and excessive claims. Some legislation on the subject is doubtless desirable; but a bill providing for the settlement and payment of demands so indefinite in their nature should contain guards which this Bill does not provide.

EXECUTIVE CHAMBER, ALBANY, May 17, 1875.

To the Senate.

I return herewith, without my approval, Senate Bill No. 262, entitled "An Act to confirm and legalize certain acts of the Common Council of the City of Elmira." The Bill enacts that a resolution of the common council of the city of Elmira ordering the paving of a street with a special patent pavement, the contract of the mayor under such resolution, and the reso-

lution of the common council assessing for the expense of the work "are hereby declared valid and legal, and in full force and effect." It then adds that "all official acts of the said common council and mayor," under the said resolutions, "the contract made pursuant thereto, and all acts relative to the ordering and paving" of the street, and "the assessment for the cost and expense thereof," shall be held "valid and legal and in full force and effect." The last clause does not specify what acts it legalizes; it does not confine its operations to acts of the mayor and common council, or of any public officer. No part of the Bill specifies the nature of the illegalities which it cures; it is not limited to informalities or irregularities which involve no substantial wrong to individuals and no violation of public policy. If there were surprise, fraud, or corruption; if there were a total want of jurisdiction; if there were a breach of a sound public policy which established guards for the protection of private rights against abuses in assessments; if there were substantial injury and injustice to individuals; if there were every conceivable wrong possible to occur in such a matter, — this Bill, in as sweeping terms as human language can supply, adopts them on the part of the legislative power of the State, strikes out of existence the private rights which have been disregarded, and annuls all judicial remedies by which they can be asserted or defended. In a similar case, where the language of the Bill was certainly no broader, and where the defects were not alleged to be more than technical or formal, the mayor and other officers of one of our principal cities attended in person to show the great evils that would result if the defects were not cured; but I felt it to be a clear duty to withhold my sanction from a bill expressed in language of dangerous generality. Such loose legislation is of evil example upon the statute-book, even if it works no actual injustice in the case which is the first precedent. Those who seek these bills are anxious, to be sure, to make them broad enough for their own present object, and are not concerned as to the possible injury and injustice to others,

or the evil policy that may inadvertently result. The loosest precedents are most likely to be copied. A bad practice in a few cases grows into an authority. Healing statutes are enacted where public policy would sustain official acts that are invalid by reason of oversight or inadvertence, and some private rights are benefited and none harmed by the confirmation. On the same principle, instruments executed by private persons are sometimes aided. Out of such precedents has arisen a disposition on the part of municipalities to apply for statutes curing informalities or irregularities in the acts of their officers in respect to local assessments. A natural inclination to favor their own powers and to fall in with expedients which increase the fund at their disposal for expenditure out of the same taxes, tends to enlarge the scope of such bills. Questions between the municipality and particular taxpayers become frequent. Hearings before the governor are asked for. In a recent instance numerous parties and several counsel attended. In the present instance, nine suits were pending when the Bill passed. In such cases, every variety of conflicting rights and conflicting equities are presented. It is quite clear that such bills, if tolerated at all in cases that are disputed or in the process of litigation, should show on their face that they are carefully limited in their operation; that they will not contravene the policy which imposes reasonable restraints for the protection of individual and personal rights of innocent third parties. It is a sufficient objection to the present Bill that it contains none of these qualifications, but is expressed in the broadest terms. But to this objection is added the fact that the several remonstrances of the taxpayers of Elmira allege that substantial wrongs were committed in the assessment, that jurisdiction was never acquired, that the proceedings were tainted by fraud and bribery, and that aldermen were interested in the contract, which was thereby rendered void by an express provision of the charter of Elmira. I do not assume that these allegations are true in fact, but I cannot see that those who make them should be cut off from the right

of trying to prove them in the courts, or that the issues they raise ought to be tried in the Executive Chamber. The saving clause in the Bill saves nothing; for the nine suits existing when the Bill was passed, being instituted by the city, have been, as I am informed, or are about to be discontinued, for the purpose of renewing them after the Bill should become a law.

EXECUTIVE CHAMBER, ALBANY, May 17, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 345, entitled "An Act in relation to the Chautauqua Lake Camp-Meeting Association of the Erie Conference of the Methodist Episcopal Church." The corporation named in the title of this Bill is the owner of a large tract of land, a portion of which has been subdivided into lots and leased for long terms to various persons who may or may not be corporators, and who have erected cottages thereon. I am informed that these leases contain no reservation of rent and no provision authorizing any assessment to be made by the corporation upon the leased property for any purpose. This Bill provides that the corporation may levy a tax upon the real and personal property within or upon its grounds for the purpose of paying the salary of a janitor, and improving and protecting the property, not exceeding five hundred dollars in any one year, unless otherwise ordered by a vote of two thirds of the property holders. It provides for the election of an assessor and a collector; and the mode of assessing and collecting the tax corresponds generally with that prescribed for the assessment and collection of town taxes. In my opinion it would be a dangerous innovation for the State to delegate any portion of its taxing power to a private corporation. The object sought to be obtained by this Bill can be better accomplished by an agreement between the persons interested.

EXECUTIVE CHAMBER, ALBANY, May 17, 1875.

To the Senate.

I return, without my approval, Senate Bill No. 249, entitled "An Act to authorize the Board of Police of the City of New York to grant new trials." This Bill is objected to by every member of the Board and by the experienced officers of the police. Their unanimous judgment has been communicated to me, that if it become a law, it will seriously impair the discipline of the police force, on the efficiency of which the good order of the metropolis depends. It is said to have been introduced in the interest of two dismissed policemen who would like to be restored, but whose hopes would be sure to prove illusory. I have no doubt, in forming an independent conclusion, that the Bill ought not to become a law. Certainty in the punishment for infractions of discipline, disobedience, or neglect of duty is of far more importance than severity. Celerity in the infliction of penalties and finality in the trial are the essence of discipline. Such trials now consume an afternoon session on about three days of each week. Every person convicted will desire a re-trial, and will struggle to make a case for restoration. Evidence will be lost, the fear of punishment weakened, and the effect of punishment actually imposed will be impaired by the continuing hope of eventual escape. The Board will be overwhelmed by trials. If an injustice to an individual does sometimes happen by a misjudgment, it is an insignificant evil compared with the introduction of a new and potent element of disorganization and demoralization to the whole service. The Act provides that, in case of a decision in favor of the policeman on a new trial, he shall be restored by operation of law. In the mean time the office will have been filled, and this provision would produce two incumbents in one office, and would be prolific of claims for back salaries.

EXECUTIVE CHAMBER, ALBANY, May 17, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 322, entitled "An Act to regulate the course of proceedings at a trial on a charge of felony after a previous conviction for felony." This Bill provides that upon the trial of a person charged with felony, after a previous conviction of that crime, the offender shall first be arraigned on so much only of the indictment as charges the subsequent offence; that if a plea of "not guilty" is entered, the jury shall first inquire whether he is guilty of the subsequent offence; that if he pleads guilty, that then the jury shall inquire concerning the previous conviction. There is no express provision for any inquiry as to the fact of the previous conviction where the prisoner is found guilty of the subsequent offence, after a trial on the merits; and as penal laws are to be construed strictly, it is at least doubtful whether such an inquiry could be had. Well-settled rules of the administration of the criminal law should not be altered for light reasons, nor without the exercise of great care to avoid the introduction of new and doubtful questions of construction. This Bill is loosely drawn, and does not fully provide for all the exigencies which may arise under it. For instance, where the prisoner pleads guilty of the subsequent offence, and the jury disagree as to the fact of the previous conviction, it cannot, from the language of this Bill, be gathered whether the prisoner is to be sentenced for the lesser offence, or whether there must be a new trial upon all the issues. The apparent purpose of the Bill is to guard against the jury being prejudiced by the fact of the previous conviction. With an intelligent jury, acting under the guidance of an experienced and learned judge, there can be no danger of serious injury to the rights of the prisoner at all comparable to the evils which result from a hasty and ill-considered change in the well-settled rules of conducting trials of criminal cases. Besides, under this Bill, as amended in the Senate, the jury might be informed of the previous conviction

by the reading of the indictment. So long as several different misdemeanors can be charged in the same indictment and tried at the same time, there can be no impropriety in trying at the same time all the questions involved in the allegation of a single crime, although they involve distinct issues.

EXECUTIVE CHAMBER, ALBANY, May 22, 1875.

To the Assembly.

I return herewith, without my approval, Assembly Bill No. 493, entitled "An Act to authorize the taking of certain lands in the City of Buffalo for the purpose of the continuation of Fillmore Avenue from its present southerly termination to the westerly side of the Hamburg turnpike, and for improving and embellishing the same."

This Bill authorizes the city of Buffalo to open a certain avenue one hundred feet wide, and to enlarge an existing street to the same width, and provides that the lands so taken shall be one of the approaches or connections to said park, and may be controlled, improved, and embellished in the same manner in all respects as land heretofore taken under the Act of 1869.

Chapter 165 of the Laws of 1869, which is supposed to be the Act referred to, provides that the expense of improving and embellishing the lands taken thereunder for a park shall be met by the issue of bonds of the city of Buffalo. The city now has ample power to open and improve streets, assessing the expense thereof upon the property benefited thereby. The only object of this Bill, therefore, is to place the control of the avenue to be opened in the hands of the park commissioners, and to cast the expense of improving and embellishing the same upon the city at large instead of upon the property benefited.

I am unwilling to assent to any Bill which, without urgent necessity, shall increase the present heavy indebtedness of the city of Buffalo, or shall add to the very heavy burdens which now rest upon its taxpayers, especially where, as in this case, it is not asked for by the municipal authorities.

MEMORANDA FILED WITH CERTAIN BILLS IN THE OFFICE OF THE SECRETARY OF STATE, 1875.

Assembly Bill No. 287, *entitled,* "*An Act making appropriations for certain expenses of government and supplying deficiencies in former appropriations.*"

I object to the following items in this Bill: —

(1) "For Charles Simon, for expenses incurred by him in the case of the contested election for member of Assembly for the Third District of the County of Onondaga for the year 1874, being a reappropriation of like amount in the Supply Bill of 1874 not paid, the sum of two hundred and fifty dollars."

The claim for which this item makes a new appropriation was settled in full last year by the payment of five hundred dollars, fixed by the Comptroller, who was authorized to audit the claim, to the amount of two hundred and fifty dollars, in addition to the sum at which it was so audited. There is no ground for reviving any portion of the claim which was thus disposed of by final settlement.

(2) "For the Onondaga Salt Springs, for a new water-wheel at Syracuse pump-house, $4,000; for two new large piston-pumps at Salina pump-house, $2,500; for two old large piston-pumps at Salina pump-house, $500; for six new deep well-pumps for new wells, $3,000; for six new well-houses, $2,300; for shafting, gearing, and trestle for new wells, $2,500; for new engine-house for Syracuse group of wells, $1,000; for new conduits, $2,200; for new lathe for boring logs, $1,100; for boring-tools for new lathe, $300; for shafting and gearing for driving new lathe, $500; for twenty-two salt covers, appropriated to make room for new wells, $1,100; for land required for operating new wells and laying down conduits, $2,000."

The appropriation for the next fiscal year provides sixty thousand dollars "for superintendence, collection, and necessary expenses." The sum is probably larger than the entire income to the State from the salt works will be during the same period.

The appropriation last year was fifty thousand dollars. The net income was about ten thousand dollars. This additional appropriation would be applicable to the current year, and would make the expenditures at least thirteen thousand dollars in excess of the whole income.

The receipts from the salt works for the last five years have been $399,542, and the outlay, $421,722. The balance against the State is over twenty-two thousand dollars. During the last year over 37½ per cent of the expenses was for salaries. At the present time the prospects of the salt business are very unfavorable. It is said that of three hundred salt blocks not more than twenty-five are now in operation, and that no new salt has been inspected this season. Extraordinary outlays, even under the specious guise of improvements, are very unsuitable to the present condition of the interests of the State in these works and to the general condition of the salt business at the present time.

All requisite repairs and everything necessary to protect the State property ought to be paid from the regular annual appropriation. For every such purpose that fund ought to be ample. Economy ought to be practised in all expenditures, and retrenchment should be rigorously enforced in current expenses. No new investments for improvements ought to be made at the expense of the taxpayers of the State without a better assurance of the future. So far from venturing into new operations, a thorough investigation ought to be made of the past administration of these works.

(3) "For refunding to the County of Wyoming moneys alleged to have been erroneously paid into the State treasury, $2,276.01, if upon investigation the Comptroller shall determine that said county is equitably entitled thereto."

It is at least questionable whether this claim rests on any basis of equity. The facts, as near as they can now be ascertained, are adverse to its allowance. It is quite certain, however, that the allowance of this item would give rise to

similar claims to the extent of a hundred and fifteen thousand dollars from other counties which could be claimed with equal justice.

There is no reason why this county should be preferred over any other, or this item sanctioned, unless the whole matter is investigated and all the counties placed upon an equal footing.

(4) "For walling and covering with stone the State raceway, leading from the Erie Canal to the pump-house in the third ward of the city of Syracuse, for the purpose of propelling the public pumps, the sum of twenty thousand dollars, or so much thereof as may be necessary, one half thereof to be expended in the year 1875, and the other half thereof in the year 1876, the work to be done first from Genesee Street north to the pump-house; and for the construction of a two-foot sewer in Clark Street and Leavenworth Avenue, in the city of Syracuse, opposite lots belonging to the State, in accordance with plans of sewer commission and common council of said city, the sum of five thousand three hundred dollars, or so much thereof as may be necessary. Each of said works to be done under the direction and control of the State engineer and surveyor, the canal commissioner in charge of the middle division of the canals, and the superintendent of the Onondaga Salt Springs, who are hereby authorized and required to advertise and let the same to the lowest *bona fide* responsible bidder, whose bids shall be balanced, giving adequate security for the faithful performance of the works. Cast-iron conduits may be substituted in said raceway in place of the walling and covering with stone, in case the said commission shall find the same can be done as cheaply, and that it will be for the interest of the State so to do. No part of the work shall be contracted for, nor money expended thereon, until the State engineer shall certify that the same is necessary, and in his opinion can be completed for the amount hereby appropriated."

This raceway was rebuilt under the supervision of George Geddes, and he alleges that it was an excellent piece of work, and is in good condition at the present time, having a plank bottom 9 to 10 feet in width, and side walls 2 feet in thickness. The water runs through it at $2\frac{1}{2}$ miles per hour, with no place where it can stagnate or render the locality unhealthy.

A part of the contiguous lands has been sold by the State. The raceway now serves all the purposes for which it was constructed, and no benefit can accrue to the State from the projected expenditure. Nor has the State any interest in the construction of the sewer. If one is needed in that locality, it should be built, as sewers are in other parts of the State, by the interests benefited.

(5) "For refunding to the city of Auburn the amount of the assessment for paving in front of the State Armory, $1,336.07, and for building a sewer in front of the State Prison at Auburn and walks in front of the State Armory in said city, $1,109.66, to be paid on the draft of the mayor of said city."

I assume that a municipality has no jurisdiction to levy an assessment upon property belonging to the State. The city corporation derives all its power from the sovereignty of the State, and I cannot admit that the creature can impose any liability upon the property of its creator. The benefits derived by the locality from the establishment of a State institution are more than sufficient to counterbalance the burdens imposed by the withdrawal of the property occupied by it from local assessments.

(6) "For the Willard Asylum for the Insane, to finish a new group of buildings sufficient to accommodate two hundred additional patients, a hundred thousand dollars, or so much thereof as may be necessary, to be certified by the building superintendent of the asylum."

The Willard Asylum is one of the most meritorious of the State institutions; but the policy which it seems right and wise to adopt in regard to outlays for new construction requires that the appropriation of a hundred thousand dollars to erect a new group of buildings should be postponed at least until next year, and perhaps until the year after, when the bounty debt will have been extinguished.

The recent session of the Legislature found the State in the progress of constructing four great State institutions, — three

asylums for the insane and a reformatory. It might have been supposed that such an extensive provision for the insane as is contemplated in these three institutions could not become necessary on the instant, and that common prudence would have dictated that one institution should be completed before another was begun. But unfortunately not even the sacred influences of charity could save these works from the spirit of legislative log-rolling or the rapacity of local expenditure.

Two and three quarter millions of money raised by taxes has been actually expended on these four institutions, and about four hundred and fifty thousand dollars raised by taxes and appropriated remains unexpended, and yet no considerable part of these works are made available. The policy of beginning everything and finishing nothing has prevailed. Construction has been on a scale of costly extravagance.

The annexed table shows the situation of these institutions as they now stand. The column which contains the estimated cost of completing the whole building, in each case was furnished by an intelligent and judicious person, and is the only part of the statement that is a matter, not of certainty, but of opinion.

	Unexpended appropriations.	Total expended till now.	Additional to complete an available part.	Total cost of part completed.	No. of patients in part.	Cost per head.	Additional to complete whole building.	Total cost of entire building.	No. of patients in whole.	Cost per head.	Appropriation last year.	Appropriation this year.
Hudson River State Hospital for the Insane . .	$152,628.85	$1,293,518.26	$50,000	Less than half buildings. $1,496,147.11	300	$4,990	$1,700,000	$3,196,147.11	600	$5,167	$148,000.00	$50,000
Buffalo State Asylum for the Insane	71,205.35	571,352.91	250,000	3 buildings out of 8. 892,558.26	150	5,950	2,100,000	2,992,558.26	600	5,000	150,000.00	150,000
Homœopathic Asylum for the Insane at Middletown	61,619.10	291,915.79	134,000	2 buildings out of 5. 487,534.89	200	2,437	500,000	987,534.89	600	1,700	166.509.89	123,800
Elmira Reformatory . .	160,000.00	619,602.56	40,000	About half. 819,602.56	250	3,300	buildings, 300,000 wall, 200,000	1,319,602.56	500	2,600	300,000.00	100,000

The policy adopted by the chairman of the Committee of Finance of the Senate and the chairman of the Committee of Ways and Means of the Assembly, with my concurrence, was to confine the appropriations of the present year to such sums as would make available and bring into use the portions of those structures most nearly approaching completion. In the main, the appropriations made by the present Bill conform to that plan. Provision is likewise made in this Act, and in another applying to the three asylums, for a revision of the plans for the future construction authorized, and to secure as much economy as possible in the work. It is advisable that the appropriations for the completion of the other parts of these institutions — if on careful examination and consideration they are to be completed on their present plans — should be deferred until year after next, when the bounty debt will have been paid and a further remission of taxes will become possible.

It has been stated by the Comptroller that the cost of former institutions of this nature was but six hundred dollars per inmate, and it was estimated by him that in the recent more expensive times twelve hundred dollars per inmate, even "with enlarged capacities and better conveniences," ought to be adequate. It is quite clear that an outlay of five thousand dollars per inmate for the purpose of providing shelter for the unfortunate objects of public charity is unreasonable and extravagant. That would be equal to twenty-five thousand dollars for five persons, which compose the average family in this State. How many families of laborious and thrifty producers can afford to live in a house costing twenty-five thousand dollars?

In 1865 less than one sixtieth of the houses of this State were of stone, and their value was about ten thousand dollars each, or two thousand dollars for each inmate. Those of brick, which are about one eighth of the whole number, were valued at six thousand dollars, or twelve hundred dollars for each inmate. Those of wood, which are three fourths of the whole

number, were valued at eleven hundred dollars, or two hundred and twenty dollars for each inmate.

I deny that there is any sound public policy in erecting palaces for criminals, for paupers, or for the insane. A style of architecture simple, and fitted to the nature of its object, would reconcile artistic taste with justice toward the industrious producers, on whom falls the burden of providing for the unfortunate. Waste in such edifices is not only a wrong to the taxpayers, but by just so much it consumes the fund which the State is able to provide for the objects of its charity.

Nor does the mischief stop with the completion of costly dwellings. The State still has to provide annually for the support of their inmates. By an inevitable association of ideas in men's minds, magnificent homes lead to magnificent current expenditure. The pride of officers and managers and of local admirers, and the zeal of benevolence, are freely indulged where they are gratified without expense to those who are swayed by them.

It is to be remembered that, after all, the incidence of taxation is chiefly not upon accumulated wealth, but upon the current earnings of the million who carry on their productive industries in frugal homes. They ought not to be the only class disfavored by the policy of the State; they ought not to be unnecessarily burdened. A governmental selection adverse to those from whom its strength and wealth proceed would reverse the laws, process, and results of natural selection.

It is proper to add in this connection that communications have been received from gentlemen eminent in literature and science, in social life and public consideration, complaining of the legislative provision attached to the appropriation for the Homœopathic Asylum at Middletown, by which the management of that institution is revolutionized.

The answer to their suggestions is, that the Governor is not able to see that he has any power under the provision of the Constitution to strike out that clause or to give to them the redress they seek.

(7) "For the Adjutant-General to replace certain property destroyed by fire in the Armory at Syracuse on the 24th of June, 1873, according to schedule in the hands of the Adjutant-General, the items of which are to be audited by him, the sum of $1,178.78, or so much thereof as may be necessary."

This item, as the Adjutant-General states, was inserted without his knowledge or agency. The claims, if they exist at all, rest on a very slender basis. The appropriation is also subject to the objection that it appropriates the public money before the claims have been audited.

(8) "For the establishment of a female department of the Western House of Refuge for juvenile delinquents, as provided by Chapter 228 of the Laws of 1875, the sum of seventy-five thousand dollars."

This sum is already sufficiently appropriated by Chapter 228 of the Laws of 1875, and ought not to be here repeated.

(9) "The Comptroller is hereby authorized to pay to Wheeler H. Bristol the amount that shall have been audited by the Lieutenant-Governor and Attorney-General, pursuant to Chapter 299 of the Laws of 1875; and the sum of $9,159.75, or so much thereof as may be necessary, is hereby appropriated for that purpose."

Section 19 of Article III. of the Constitution, as amended, declares that "The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law."

It is the better opinion that the audit of a private claim must precede the appropriation for its payment. In the present case a law has been passed providing for an audit of this claim; but no audit seems yet to have been made.

(10) "For expenses incurred by the County of Cayuga on the indictment and trial of Michael Donohue, John Coughlin, Thomas E. Hardy, Patrick Eagan, and Patrick Clifford for offences committed by them during their confinement in the State Prison in Auburn, the sum of $2,808.98, or so much thereof as may be certified to by the Attorney-General."

It is the rule that the expenses of a criminal trial shall be borne by the county in which the offence was committed, irrespective of the residence of the offender or the occasion which brought him within the county. On principle, there seems to be no reason why the State should refund to the County of Cayuga the expenses of this trial.

(11) "For removing the bar and dredging the channel of Cayuga inlet, to be done under the direction of the canal commissioner in charge of the middle division of the State canals, the sum of five thousand dollars, or so much thereof as may be necessary, which work shall be let by contract to the lowest bidder, as now required by law for the advertising and letting of public works."

There has been already expended, from year to year, several hundred thousand dollars, under the pretence of doing this work, and no perceptible lowering of the water has resulted. No further expenditure ought to be made for this purpose without a thorough investigation to establish the utility of the work proposed, and the fact that the appropriation will accomplish the object. It is provided that this expenditure be made by the canal commissioner in the manner of canal contracts; in which view the item would more properly be found in the general provisions for canal work. The State has no motive for introducing either the forms or results of canal work into any other parts of the public service.

(12) "For the Auditor to make his compensation equal to that of last year, the sum of seven hundred and fifty dollars."

Section 18 of Article III. of the Constitution provides that "The Legislature shall not pass a private or local bill creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed."

GENERAL CONSIDERATIONS IN RESPECT TO THE SUPPLY BILL.

1. The Appropriation for the New Capitol.

Of the million provided for this purpose, more than two hundred thousand dollars will be consumed in the payment of arrears now existing in the nature of a floating debt, and less than eight hundred thousand dollars will be applicable to new construction.

It is with reluctance that I assent to this appropriation. Nearly six millions of dollars have already been expended upon this edifice. Although the general plan has been determined, the details have not been worked out with such thoroughness and such certainty as to afford any guide as to the amount which will probably be required for the completion of the building. If it were an original question, I should have no hesitation in condemning and discarding a work of such unnecessary cost; but it cannot be now abandoned without losing all that has been thus far expended. In deciding on the wisdom of completing it, we are to consider only whether it will be worth the future outlay for its completion. What that cost will be, ought to be ascertained with all the precision attainable. I doubted whether the work ought not to be suspended until the plans of future construction should be settled, and full assurance had that the annual expenditure should be made usefully in furtherance of those plans. In the mean time I favored a reduction of this appropriation below the amount adopted by the Legislature. But provisions for this general object were inserted in the Supply Bill. They perhaps justify the allowance of this item, especially as the law imposing a tax for raising the money for this purpose will necessarily go into effect, whatever might be done with this appropriation.

2. Reduction in Taxation this Year.

The Act to provide ways and means for the support of government, which imposes upon the people what is called the State tax, provides for the raising of 6 mills for the year beginning on the 1st of October, 1875, against $7\frac{1}{4}$ mills imposed by a similar law for the year 1874. The sum to be collected will be $13,015,874.23 imposed by the present Legislature, against $15,727,482.08 imposed by the Legislature of 1874. The reduction in State tax will therefore be $2,711,634.85. The annexed statement shows the general nature of the objects for which the taxation of the two years was imposed.

STATEMENT OF THE COMPARATIVE TAXATION FOR STATE PURPOSES IN THE FISCAL YEARS

1874. Valuation of Real and Personal Estates, $2,169,307,873.			1875. Same Valuation Assumed.				
	Mills.	Producing		Mills.	Producing	Increase.	Decrease.
Schools	1¼	$2,711,634.84		1¼	$2,711,634.84		
Bounty Debt	2	4,338,615.74		2	4,338,615.74		
General Purposes	1½ × 69/100	4,189,475.84		1⅜	2,982,798.33		$1,206,677.51
Asylums and Reformatories	⅜ ⅐	813,490.45	Asylums and reformatories, and deficiencies in general fund and other contingent expenses	11/20	1,193,119.33	$379,628.88	
Canals:							
Canal awards	7/32	474,536.10		1/5	433,861.57		40,674.53
Floating debt	1/10	216,930.79		⅛	271,163.49	54,232.70	
Extraordinary repairs	⅞	1,898,144.39					1,898,144.39
Capitol	½	1,084,653.93		½	1,084,653.93		
Year 1874	7¼	$15,727,482.08		6	$13,015,847.23	$433,861.85	$3,145,496.43
" 1875	6	13,015,847.23					
Net Decrease		$2,711,634.85	Net decrease			$2,711,634.58	

3. Reduction in Appropriation.

In order to make an effectual and useful reduction of taxes it is necessary that a corresponding reduction in appropriations and expenditures should be accomplished, and the creation of a deficiency at the end of the year, to be provided for by future taxation, should be prevented.

Charges on the canal revenues.

The appropriation for ordinary expenses and ordinary repairs of the canals for the fiscal year beginning the 1st of October will be $1,109,150, with a contingent provision of $150,000 for the Upper and Lower Mohawk aqueducts and the sixteen locks; the aggregate is $1,259,150. It is probable that the revenues of the canals over and above this amount will not be quite sufficient to pay all the interest on the canal debt, exclusive of contributions to the sinking fund to redeem the principal of that debt which the Constitution enjoins.

The necessity of keeping down charges on the canal revenues to the lowest practicable amount is quite apparent. There ought to be no difficulty under an improved administration in making the canals self-sustaining, both for ordinary expenses and repairs and for any necessary work hitherto classed as extraordinary repairs. Beyond that not much can be expected.

The reduction of appropriations for ordinary expenses and repairs, counting the contingent provision of the present year and the provision of last year for deficiencies, is $415,360. The provision for new work and extraordinary repairs upon the canals, which last year involved an appropriation of about $2,000,000 and a tax of about $1,900,000, has this year been totally discarded.

The reappropriations of the proceeds of former taxes have fallen from $917,000 last year to $340,000 this year, being a reduction of $577,000. This, however, does not affect the income of the present year or the result of its expenditures, except in the amount of $67,765 raised by former taxation, which is now reclaimed into the treasury.

The failure of sundry items and bills to receive the Executive sanction will reduce the appropriations as follows : —

Extraordinary repairs	$365,946
Appropriation on certificates of claims against the United States made in behalf of soldiers of the war of 1812	100,000
Appropriation for improving navigation of the Hudson River	60,000
Items objected to in the Supply Bill, exclusive of $75,000 for Western House of Refuge	172,169
Sums reclaimed into the treasury by striking out items of re-appropriations for extraordinary canal repairs	67,765
Total	$765,880

There is no reason to doubt that, with the reductions made in the legislative bodies and by the refusal of the Executive sanction to items and to bills passed by the Legislature, the expenditures and appropriations ought not to exceed the taxes levied, and the reduction of taxes will be a clear saving to the people.

In the Special Message of March 18, 1875, encouragement was held out that the success of the measures therein proposed " will enable the State to remit for the present year, as compared with last, to the boatmen and transporters from five to six hundred thousand dollars of tolls, and at the same time to give relief to our overburdened taxpayers in the reduction of taxes to the extent of more than one and three quarter million of dollars."

It is a subject of just congratulation that the results indicated will be much more than realized. The remission of tolls to the extent of five or six hundred thousand dollars is equivalent to a reduction of taxes to the same amount. The direct reduction of taxes will be nearly two and three quarter millions, instead of one and three quarter millions, as anticipated.

The annexed table will show the growth of taxation in the fifteen years from 1860 to 1874 inclusive.

Year.	Aggregate Equalized Valuation.	Rate of State Tax in Mills on each Dollar of Valuation.	State Tax levied, including School Tax.
1860	$1,419,297,520	3.5–6	$5,440,640.48
1861	1,441,767,430	3.7–8	5,586,848.79
1862	1,449,303,948	4.3–4	6,884,193.75
1863	1,454,454,817	5	7,272,274.08
1864	1,500,999,877	5.1–4	7,880,249.35
1865	1,550,879,685	4.53–80	7,230,976.53
1866	1,531,229,636	5.9–16	8,517,464.85
1867	1,664,107,725	7.3–5	12,647,218.71
1868	1,766,089,140	5.4–5	10,243,317.01
1869	1,860,120,770	5.5–8	10,463,179.33
1870	1,967,001,185	7.41–156	14,285,976.55
1871	2,052,537,898	5.79–120	11,613,943.61
1872	2,088,627,445	9.3–8	19,580,882.30
1873	2,129,626,386	6.95–100	14,800,903.38
1874	2,169,307,873	7.1–4	15,727,482.08

The taxation for the present year is six mills. There will be no difficulty in reducing the taxation for 1876 to five and a half mills by several easy retrenchments, and abstaining from any fresh outlays for new construction of insane asylums and reformatories during the year, even if we continue the usual appropriation toward the completion of the capitol.

Future reduction of taxation.

The year 1877 will be exempted from the instalment for the payment of the bounty debt, which is two mills, — producing $4,348,000, — and the taxation can be reduced to three and a half mills.

The people of this State are to be congratulated upon the final extinction of the burdens which they have borne in the payment of upward of twenty-seven millions of dollars of pretended bounty debt, which, as the Comptroller states in his last report, was "created nominally to pay off bounties to volunteer soldiers who enlisted in the military service of the United States during the rebellion, but of which only an inconsiderable part reached the soldiers who were actually engaged in the contest."

After the payment of that debt and in the levy of 1877 the State taxes can be reduced to three and a half mills, even if

an appropriation of half a mill should be continued for the new capitol. That will be one third of a mill less than the taxation of 1860.

With a reformation in the State prison systems and expenditures and in other parts of the public service, there will still be a margin for further reduction; and on the completion of the outlay for the new capitol, taxation for State purposes can exhibit a complete return to the ante-war condition.

Retrenchment and reform will then find little scope for their exercise except in the vast domain of municipal taxation, embracing the expenditures of counties, towns, and cities, and in the still vaster field of expenditures by the Federal Government raised by various forms of indirect taxation, which collect from the people of this State an aggregate sum larger than the whole amount of State, county, town, and city taxes.

In dismissing the discussion of this Bill it is proper to say that it contains one hundred and eighty-two separate items, that the Reappropriation Bill contains forty-three, and the Extraordinary Repair Bill forty-one, — making in all two hundred and sixty-six distinct items. Many of them were of a nature to require an investigation of much intricacy, detail, and labor. For the first time, under the recent amendments to the Constitution, it became the duty of the Governor to act upon them separately, with such knowledge as he could gather for the purpose, instead of signing the aggregate bills as a matter of course, which has been the uniform practice hitherto.

The Legislature at its adjournment left two hundred and fifty bills, some of them long and complicated, many of them involving vehement controversies, and not a few imperfect in construction but for good objects, which made it an uncertain choice of evils whether to sanction or reject them.

Hitherto the residue of the year, usually extending to eight months, has been allowed for the comparatively small work imposed on the Executive. This year, for the first time, the period during which action must be had upon all these bills and all these items is limited to thirty days after the adjourn-

ment of the Legislature, — a period which would have been more than consumed by the hearings applied for in controverted cases, by interviews, and by the reading of papers submitted.

I cannot hope always to have escaped errors of information or of judgment; but I have endeavored, in so completely novel a situation, to set no bad precedent for my successors. Not unmindful of the equities of individuals, I have done the best I could for the State.

The items hereinbefore specified are objected to; the other portions of this Bill are

Approved, June 21, 1875.

Assembly Bill No. 82. — *An Act to reappropriate moneys for the construction of new work upon, and extraordinary repairs of, the canals of this State, and for payment of awards of the canal appraisers.*

Section 1 is a reappropriation of the balance remaining unexpended on the 16th day of May, 1875, of an appropriation of $776,855.28 appropriated in 1871 and reappropriated in 1873, being twenty thousand dollars, or thereabouts, for a swing or drawbridge in Buffalo Street, in the city of Rochester.

It appearing that the construction of the said bridge is provided for by a series of laws, that it is under contract and approaches completion, this item, irrespective of the question of its original wisdom or policy, is allowed to pass.

Section 2 is a reappropriation of the unexpended balance of $984,630.89 appropriated in 1873, such balance being the sum of $281,179.62.

This balance is reappropriated by thirty-nine separate items.

Item No. 1. "For repairing bottom and banks of the Erie Canal along the premises of Stillman A. Fields, in the town of Canajoharie, so as to prevent leakage upon the premises of said

Fields, and for constructing a waste ditch along the premises of Samuel Beekman in said town, so as to carry back waters of the Erie Canal, the sum of five hundred dollars, or so much thereof as may be necessary."

I object to this item. The work, as I am informed, has not been let. If necessary in 1873, it has been strangely neglected. Work of this character, and so inconsiderable in extent, ought to be done as ordinary repairs.

Item No. 2. "For constructing iron bridge superstructures on the Eastern Division, made necessary in consequence of change of plan, the sum of $10,727.93."

I object to this item. If changes in the structure of bridges are to be made, they should be done upon a systematic plan, duly considered by the Canal Board, with the approval of the State engineer, and an examination of the particular case should be had to decide whether the proposed change is clearly necessary for public purposes.

The tendency to change the innumerable bridges over the canal at the instance of private persons and local influences, to conform to a prevailing fashion, the contagion of which passes from one bridge to another — in the absence of any resisting power in behalf of the State, which finally pays the cost of the change — is a serious and growing evil. The applications for swing-bridges — tearing down the existing bridges — are becoming frequent. They are demanded by some individual, corporate, or local advantage, real or imaginary. They are usually in places which have been already largely benefited by the construction of the canal. They impose on the State a large extra cost, and charge it with an annual expense for operating each one equal to the interest on about twenty-five thousand dollars. There are 1,318 bridges over the canals, and the erection and operation on this plan of one sixth of this number would probably cost the State as much as the original outlay for the Erie Canal. The fashion is full of danger.

Item No. 3. "For raising the Rocky Rift Feeder Dam, the sum of $1,359."

The item of $1,359 remaining unexpended will about complete the existing work and the payment for it.

Item No. 4. "For the construction of a farm bridge over the Rocky Rift Feeder, on the lands of John H. Keyser, in the County of Montgomery, the sum of $250, or so much thereof as may be necessary."

I object to this item. As the work has not been let and no steps taken toward it, the necessity cannot be pressing, and the money had better be covered into the treasury.

Item No. 5. "For constructing and maintaining a highway bridge over the Erie Canal in the town of Watervliet in the County of Albany, from the Ireland Corners Road on the west of said canal, to Island Park on the east of said canal, the sum of $720."

The unexpended balance was reduced on May 28, 1875, to $600, but the account not closed.

Item No. 6. "For raising iron bridge superstructure on Genesee Street, Utica, to the height required, and adapting approaches to the same, the sum of $2,221.40."

I object to this item. The work has been finished and paid for, and the balance ($2,221.40) should be covered back into the treasury.

Items Nos. 7 and 8. "For removing wall-benches and constructing slope-walls on the towing-path side of the Erie Canal, between the east line of the city of Utica and lock No. 45 at Frankfort, and between lock No. 46 and Whitesboro Street Bridge in the city of Utica, the sum of $29,545; and between lock No. 33 and section No. 75 the sum of $340."

The unexpended balance, I am informed, will be consumed by existing contracts.

Item No. 9. "For removing wall-benches and constructing slope-walls elsewhere on the eastern division of the Erie Canal, under direction of the Canal Board, the sum of $5,734."

I object to this item. On Oct. 15, 1873, the Canal Board set apart from the sum appropriated by the original appropriation $1,650 for three hundred feet of vertical wall at the locomotive works in Schenectady, of which had been expended up to Jan. 8, 1875, $1,224, leaving a balance of $426; and on Dec. 11, 1873, the Canal Board set apart from the same appropriation, for the work extending from the junction of the Chenango Canal to the east line of the city of Utica, the sum of $10,000, of which had been expended up to Jan. 8, 1875, the sum of $4,692, leaving a balance of $5,308. The sum reappropriated by this item is made up of these two balances. These acts of the Canal Board were illegal, as the sums set apart were diverted from the purpose for which they were appropriated.

Item No. 10. "For constructing blind drains on section No. 111, west of lock No. 46, the sum of $1,800."

I object to this item. This work has been done and paid for under another contract.

Item No. 11. "For rebuilding wooden lock of stone on the Glen's Fall Feeder, the sum of $17,114."

This sum will be absorbed by existing contracts.

Item No. 12. "For completing bridge over Fort Edward Feeder, the sum of $500 or so much thereof as may be necessary."

This expenditure has been incurred.

Item No. 13. "For taking down dry vertical walls and relaying the same in cement, in order to avert claims against the State, in consequence of leakage from the Erie Canal into the cellars of adjoining property-owners in the city of Syracuse, and for removing bench-walls and constructing vertical walls, when necessary, on the Syracuse level of the Erie Canal, the sum of $4,877.36."

I object to this item. The sum of $10,000 was originally appropriated for this purpose, with the provision that the commissioner in charge should, before expending any of the

money, procure a release of all damages on account of such leakage, free of charge to the State. From this sum three amounts, being in the aggregate $5,122.64, have been set apart with the approval of the Canal Board, and expended. This balance is not now subject to draft for work under any existing contract.

Item No. 14. "For removing bench-walls and substituting slope-walls upon the towing-path, Jordan level, and long level of the Erie Canal, and for constructing two hundred lineal feet of vertical wall opposite the marble works of McCarty & Paul, and the malt-house of Adam & Co., in the village of Weedsport, the sum of $24,389.18."

This is the unexpended balance, Jan. 8, 1875, of an appropriation made in 1873 of $40,000 for the purposes named. The vertical wall is completed and paid for. The other work is progressing under contract. The Division Engineer on the 2d of October, 1874, estimated that the cost of completing the work would be $225,370. The sum of $113,000 was set apart from an appropriation of $360,000 made in 1874 for the purpose of continuing the work. The existing contracts will evidently absorb all of this item, after making allowance for all deductions.

Item No. 15. "For extending abutments, raising and widening approaches to highway bridges at East Frankfort, the sum of $225."

I object to this item. The work is completed and paid for, and the balance should be covered into the treasury.

Item No. 16. "For constructing iron bridge superstructures on the middle division of the Erie Canal, made necessary in consequence of the change of plan, the sum of $15,000."

I object to this item for the reason stated with respect to item No. 2 of this section.

Item No. 17. "For a wrought-iron foot-bridge over the Erie Canal at Franklin Street, in the city of Syracuse, the sum of $1,922."

I object to this item. I am informed that the final account for this work was rendered March 2, 1875, leaving a balance of $573.16, which may properly be covered into the treasury.

Item No. 18. "For building 150 feet of vertical wall on Erie Canal, in the village of Port Byron, in front of the property on the Thompson Patent Paper Manufacturing Company, the sum of $750, or so much thereof as may be necessary."

This work is probably completed, and the appropriation is absorbed, or will be in the final settlement.

Item No. 19. "For rebuilding broken culverts at Oswego and repairing docking and improving side-cuts at Salina; building vertical wall at necessary points on the Liverpool level; and such other improvements of the Oswego Canal as shall be directed by the canal commissioners, the sum of $9,813."

The amount of this item seems to be in excess of the sum required to complete the work; but I am not informed whether a final account has been rendered and the completed work paid for.

Item No. 20. "For repairing the State piers in the harbor at Geneva, the sum of $1,448."

This balance of $1,448 was, by payments made since the item was originally drawn, reduced upon a final settlement to 84 cents. As a reappropriation is not necessary, I object to this item.

Item No. 21. "For constructing vertical wall on the berme side of the Cayuga and Seneca Canal, near the junction with the Erie Canal, in the village of Montezuma, the sum of $194."

This amount seems to have been wholly expended.

Item No. 22. "For the completion of the Oneida Lake Canal, the sum of $25,000."

The history of this work is very interesting, as illustrating the manner in which work has been done on the canals, and in which illegalities and irregularities have been attempted to be cured by the action of the Canal Board and the Legisla-

ture. The auditing officer will doubtless see that the legal rights of the State are preserved.

Item No. 23. "For deepening and improving the Erie Canal, between Slip No. 3 and York Street, in the city of Buffalo, as authorized by the Canal Board, Aug. 6, 1872, and completing division bank and other work connected therewith in Black Rock Harbor, so as to separate the canal from and make it independent of said harbor, the sum of $37,427.42."

This appropriation, as I am informed, is nearly all expended under existing contracts.

Item No. 24. "For completing the removal of bench-walls and constructing slope-walls and removing about one hundred and fifty feet of slope-wall and substituting vertical wall therefor, in front of the premises of Nelson McCormack, about one mile east of the canal collectors' office in the village of Medina, in the Erie Canal, if in the judgment of the canal commissioner in charge it shall be deemed necessary for commercial purposes, and for other works under contract on the Western Division not sufficiently provided for, the sum of $9,056.48."

I am informed that the sum reappropriated by this item will be nearly or quite expended before this Bill can become a law.

Item No. 25. "For cleaning out, improving, and deepening the canal an average of six inches below established grade, between Thomas Creek Culvert and Macedon locks, the sum of ten thousand dollars."

The contract for this work has, I am informed, been let for less than the sum appropriated, and is nearly or quite fulfilled, but there has been no final settlement with respect to it.

Item No. 26. "For constructing and maintaining a road-bridge over the Erie Canal, connecting Averill and Munger streets, in the city of Rochester (subject to the provisions of Chapter 399 of the Laws of 1874), the sum of ten thousand dollars."

This work is let under the same contract with that mentioned in Section 1 of this Bill, and the observations made in regard to that section apply equally to this item.

Item No. 27. "For aiding in constructing a bridge over the Tonawanda Creek, according to provisions made in Chapter 863 of the Laws of 1867, the sum of eight thousand dollars."

I object to this item. This sum was originally appropriated in 1867 for the purpose of building a bridge, under the direction of commissioners, upon condition that the towns interested should raise a sufficient sum to complete it. Nothing has ever been done under the Act, and in my opinion the offer of the State ought, after having been open for acceptance for eight years, to be withdrawn.

Items Nos. 28, 29, and 30. "For constructing one hundred and twenty-five feet of vertical wall on the berme side of the Erie Canal in front of the premises of J. W. Paster and others in the village of Port Gibson, Ontario County, the sum of $625."

"For deepening Erie Basin, Buffalo Harbor, the sum of twelve hundred dollars."

"For dredging and excavating in Black Rock Harbor, the sum of $2,220."

The work mentioned in these items, I am informed, has consumed what remains in the treasury awaiting a final settlement.

Item No. 31. "For building one hundred and fifty feet of vertical wall on the berme bank of the Erie Canal at Macedon, east of the bridge, commencing at the easterly end of the present wall, provided that parties interested in said wall, without expense to the State, make all necessary excavations and place the banks of the canal in a suitable condition for said wall, as the canal commissioner in charge shall direct, the sum of $450, or so much thereof as may be necessary."

I object to this item. Nothing has been done under the appropriation, because the parties interested have not complied with the condition. They should not only make the excavation, but pay for the wall, if they wish it for their own convenience.

Item No. 32. "For constructing iron bridge superstructures on the western division of the Erie Canal, made necessary in consequence of change of plan, the sum of fifteen thousand dollars."

I object to this item for the same reasons for which I objected to item No. 2.

Item No. 33. "For the construction, by the Sodus Point and Southern Railroad Company, of three hundred and fifty feet of vertical wall on the berme bank of the Erie Canal, in the village of Newark, Wayne County, about two hundred feet westerly from the point where the iron bridge of said road crosses the canal, the sum of fifteen hundred dollars."

I object to this item. If this work is for the interest of the State, it should be done by the State; if it is for the interest of private persons or corporations, they should pay a part or the whole of the expense.

Item No. 34. "For removing the remains of State dam on Seajaquady's Creek, and the bars in said creek adjacent thereto, the sum of $740."

The work is under contract and in progress.

Item No. 35. "For the removal, replacement, and repair of the bridge on Ohio Street, over the Clark and Skinner Canal, the sum of nine hundred dollars, or so much thereof as may be necessary."

I object to this item. This work was let Oct. 14, 1873, but nothing whatever has been done under the contract. The necessity for the work does not seem, therefore, to be pressing.

Item No. 36. "For repair and construction of docking on the Clark and Skinner Canal, the sum of $917.85."

The parties interested should have paid the whole or part of the expense of this work; but the contract has been made, the work nearly completed, and most of the money drawn.

Item No. 37. "To pay the town of Pittsford four hundred dollars, and the town of Brighton six hundred dollars, or so much thereof as may be necessary for damages caused by water flowing from the side cuts in the Erie Canal during the freshets of the spring of 1873."

These sums have been paid by the checks of the commissioner instead of drafts upon the auditor, and therefore results this apparent balance.

Items Nos. 38 and 39. "For aiding in the construction of a bridge over the Genesee River, at Mount Morris, used as tow-path of the canal, three thousand dollars, or so much thereof as may be necessary."

"For constructing one hundred feet of vertical wall on the berme side of the Erie Canal, in the village of Pittsford, in front of Eckler's warehouse, coal and lumber yard, commencing at the east end of the vertical wall, already built, the sum of $313."

The first of these items has been expended since the Bill was drawn, and the sum mentioned in the other has been nearly expended.

Section 3 of this Bill reappropriates the balance remaining unexpended June 11, 1875, of $579,164.72, appropriated by Chapter 708 of the Laws of 1873, for the payment of canal awards, and for other purposes, to the payment of the principal and interest of such awards or such sums as may be awarded in lieu thereof, upon an appeal or rehearing. This balance is stated at $40,909.20, and is not, as might be supposed, the balance of the original appropriation after deducting the sums paid thereout, but is made up of the aggregate of the original unpaid awards, with the interest upon each for two years. The sum necessary to meet unpaid awards is therefore estimated somewhat arbitrarily; but as it cannot be known whether the awards will be increased or decreased upon an appeal or re-hearing, there may be no better system.

Section 4 of the Bill reappropriates the balance of $413,755.51, appropriated by Chapter 643 of the Laws of 1873, being the sum of $61,955.16 to the following purposes: —

1. For work done in Oneida Lake Canal prior to May 29, 1873, $16,769.38.

2. To pay awards made in 1870 and 1871, or such sums as may be awarded in lieu thereof upon appeal or re-hearing, $45,185.78.

The first of these items is for the work mentioned in Item No. 22 of Section 2. The second item is made up in the same manner as the sum appropriated by the last section.

Section 5 reappropriates thirty thousand dollars originally appropriated for work on the Genesee Valley Canal, but remaining unexpended, to pay the balance of the expense of doubling the locks in the Western Division of the Erie Canal.

General considerations on the Reappropriation Bill for extraordinary work and repairs on the canals.

1. This Bill consists of forty-three items. It originally passed in a few general clauses. The Governor objected that the Constitution requires that the objects and amounts should be specified; that the appropriations having been once made in detail, they could not be grouped in masses in a reappropriation. He referred to the following provision of the Constitution: —

"No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum."[1]

He also referred to the amendment adopted in 1874, which requires the Governor to act separately on each item of appropriation bills, which would be defeated by grouping numerous items together. The Bill was recalled by a joint resolution of the two Houses, and passed in its present form.

2. The clause cited of the Constitution requires, after the lapse of two years, a re-enactment of an appropriation as fully as if it had never been made. Its object was to end the system of permanent standing appropriations, which would continue indefinitely unless repealed by affirmative legislation, and to command a periodical revisal of all appropriations and an affirmative renewal of such as were to be continued. It prohibits the revival of an appropriation by a reference to any former act, or the fixing the amount or the object by such a reference. It is designed to recall into the treasury unex-

[1] Constitution, Section 8 of Article VII.

pended balances, which would grow to fill the nooks and corners of the public offices charged with expenditures. The practice of the Legislature and of the departments has for years been in accord with the present Bill as originally drawn, and has practically nullified this salutary provision of the Constitution. This most useful protection of the State treasury should be restored.

3. In acting on these items it has been impossible to extend the examination into any question concerning the pending contracts, or whether or not there be any public necessity or equitable grounds for interfering with them. The Bill operates simply to continue a provision for money for paying for the work now going on, in the event that such payments shall become necessary; it does not adopt or ratify such contracts. The questions in respect to them remain properly to be looked into by the fiscal officer of the State having charge of the canal expenditures. In the limited time which could be allotted to this Bill, it was difficult to carry the investigation as far as it has gone, and impossible to carry that investigation any farther.

4. The Reappropriation Act of 1874 (Chapter 392, Laws of 1874) appropriated in three clauses, —

1. Unexpended balance of $2,180,656, appropriated in 1870, and reappropriated in 1872	$201,855.09
2. Unexpended balance of $1,425,590.88, appropriated in 1872	467,299.67
3. Unexpended balance of $1,011,138.42 appropriated in 1870, and reappropriated in 1872, to pay canal awards	208,224.87
	$877,379.63
Add by Chapter 11 of Laws of 1874	40,000.00
Total reappropriations	$917,379.63
The Act of 1875, in forty-three items, reappropriates .	407,844.88
Of which the items objected to amount to	67,765.69
Balance	$340,079.19

This sum will form no tax or charge on the present year, having been received from the taxes of former years. The result is, —

1874	. . . . .	$917,319.63
1875	. . . . .	340,079.19
Diminution of reappropriations	. . . . .	$577,240.44
Money reclaimed into the treasury	. . . . .	67,765.69

Excepting the items objected to, the other portions of the Bill are

Approved, June 16, 1875.

Assembly Bill No. 560, *entitled,* "*An Act to authorize the construction of work upon the canals of this State.*"

Not approved. This Bill was originally entitled, "An Act to authorize a tax of three fifths of a mill per dollar of valuation of the year 1875 for the construction of new work upon and extraordinary repairs of the canals of this State." Not only was the title changed, but everything of the original Bill except the enacting clause was stricken out, and the provisions of the present Bill substituted. As it now stands, the Bill provides for the expenditure of forty-one different sums of money for the objects and purposes in the several items specified. It commands that those payments shall be made "out of the gross receipts of the canals for the fiscal year commencing Oct. 1, 1875." No other means of payment are provided. The clause imposing a tax is omitted.

This revolution in the structure, nature, and effect of the Bill has given rise to difficulties evidently not contemplated by its framers. All the items of expenditure are either for objects known in our canal legislation as ordinary repairs, or for objects known as extraordinary repairs, including payments for past work.

The items for ordinary repairs are unnecessary. The Appropriation Bill for those purposes provides $1,259,150; it had been cut down to $1,109,150. A separate item of $150,000 was added — "a further sum," as the Bill states, "or so much thereof as may be necessary for re-trunking the upper and lower Mohawk Aqueduct, and concreting and otherwise repairing the sixteen locks in the Eastern Division of the Erie Canal." Unnecessary as ordinary repairs.

I obtained the best information I could as to this proposed work, and came to the conclusion that a much smaller expenditure, which could be made out of ordinary repairs, would be sufficient for the present; but the Commissioner felt so much anxiety in respect to these important structures, and I had such reliance on his prudence and economy in using only so much of the fund provided as should be necessary, that I yielded my judgment to his wishes, and abstained from striking out this item. It left the Ordinary Repair Bill larger in amount than in my opinion would be sufficient, if wisely and faithfully expended, to keep the canals in good condition, and even to increase their efficiency, for the fiscal year from Oct. 1, 1875, to Sept. 30, 1876. I do not think, therefore, that the outlay for ordinary repairs ought to be extended by a second Bill for the purposes amply provided for in the first Bill. My views on this subject were expressed in the following passage of the Special Message of March 18, 1875: —

"In respect to ordinary expenses and repairs to the canals which are to be retained as the property of the State, I recur to the suggestion which I had the honor to submit in the Annual Message, —

"'Ordinary repairs should be scrutinized with a view to retrenching their costs, and to obtaining the largest possible results from the outlay.'

"In the present state of the prices of materials and the wages of labor, if the public officers can be inspired with a resolute purpose to make every expenditure for these objects effective, there ought to be no difficulty in reducing the appropriations from one quarter to one third below the amount provided for last year. The

present standard of repair and efficiency must be fully maintained. Everything of good administration consists in the selection of the most necessary and useful objects of expenditure, and in securing the greatest effectiveness in the application of labor and the most advantageous purchase of materials.

"If a sense of accountability and a determination to accomplish this result can be diffused throughout the agents employed in the public service, this object will be easily and certainly attained."

There is not the least risk of harm to the interests of the State, even if any extraordinary emergency should happen requiring a larger provision for ordinary repairs. The expenditures under these appropriations do not begin until October 1. They include but two months of navigation out of the seven which form the fiscal year. On the opening of the canals in May, 1876, according to the usual experience, about one half of the provision for the ordinary repairs will remain unexpended. In the mean time another session of the Legislature will have been held for at least four months, and there will have been ample opportunity to provide for any contingency now unforeseen.

Unconstitutional as extraordinary repairs.

The items which are in the nature of extraordinary repairs, and the few other items which provide for the payment of money to individuals, are subject to a more grave and an insurmountable objection. They are, in terms, a plain violation of the Constitution; they are in direct conflict with its provisions for the sinking funds to pay the canal debts, and would be a breach of the faith of the State. The Constitution (Article VII.), after providing for "the expenses of collection, superintendence, and ordinary repairs," appropriates the revenues of the canals — to the amount limited — to the sinking funds created by that instrument. It admits in priority "collection, superintendence, and ordinary repairs." It excludes extraordinary repairs. It excludes all payments for any other than the specified objects. It may be suggested that this Bill should be construed as if it had read that these payments shall be made

out of any surplus that may exist of "the gross revenues of the canals," after the payments into the sinking fund shall have been made. The answers to this suggestion are: —

1. The Bill would then be completely illusory and deceptive, and would lead to mischiefs to the private parties depending on it and to the State. It is not within the range of possibility that the canal revenues for the fiscal year 1875–1876 shall be equal to the legislative appropriations for collection, superintendence, and ordinary repairs, and the constitutional appropriations for the sinking funds. There will be no surplus out of which any payments can be made. All provisions contemplating such surplus will be a mere sham.

Illusory.

Such a device is objectionable in every aspect. It tends to induce private parties interested in the expenditures to press them in indirect and illegal forms, to obtain advances from innocent parties on the pretended obligations of the State, and will be fruitful of future claims for indemnity. It tends to induce the public officers to aid in illegal expenditures, not on a special public emergency, but as an ordinary practice, and to create a *quasi* debt against the State where the Constitution expressly prohibits even the Legislature from authorizing any real debt.

2. The language of the Bill clearly contradicts any such construction. The payments are directed to be made "out of the gross receipts of the canals." They authorize the money to be taken for their payments before the payments into the sinking funds. They exclude any idea of waiting for a surplus.

The Canal Auditor would undoubtedly refuse to make these payments according to the terms of the Bill. But the Legislature ought not to create a necessity for him to import into the Bill language which they have not chosen to put there, or to require him to make payments which the Constitution forbids. It ought not to enact as a law what, by its manifest import, is a violation of the fundamental law.

Void.

The Constitution of 1846 had its origin in the purpose of the people to limit the creation of State debts. In whatever other particulars it may have failed to answer the objects of good government, the infinite value of its restraints on the creation of debts during the last fifteen years cannot be questioned. Except for these restraints we should now, in all human probability, be groaning under the burden of some hundreds of millions of State debts.

Extreme ingenuity has been employed in circumventing those restraints. In many smaller particulars the scheme of the Constitution has been defeated; but in the main it has stood a shield of protection and safety to the people. As far as can be done, step by step, we must restore the rightful operation of these beneficent provisions. We must stand by the true interpretation of their meaning. We must obey them in spirit as well as in letter. We must discard all false practices which have overgrown the true system of sound finance established by the Constitution.

Obstacles to reform.

The practical difficulties of giving effect to a reform in the system of canal appropriations and canal expenditures are very great. The existing practices are the growth of many years. Numerous contracts for all kinds of work, on every part of the nine hundred miles of canal, were in existence, and were in every stage of progress. Many forms of liability existed for work partially done, on which certificates had been issued. Claims for damages were in every condition, from their origin to the awards by the State officers and appeals therefrom. The habit had grown up, both on the part of those who represent the State and those who deal with the State, of paying very little attention to the Constitution or the laws, in the contracts which are made, and in the doing of work. Modes of obtaining money, where work had been sanctioned by some act of the Legislature or some act of public officers, without any appropriation or without sufficient appropriation to pay for it, had become customary. Notwithstanding that the Constitution prohibits the

legislative power from contracting any debt except in the specific mode provided, by submission to a vote of the people, it has become usual to issue certificates for work outside of all appropriations or lawful means of payment, as if these certificates could create an obligation on the part of the State. It had become usual to do so in many cases where no public officer had any authority to create such an obligation; and these certificates were habitually accepted by banks and private parties as the basis of loans of money, or were purchased as investments.

The clause of the Constitution which provides for elasticity in the finance system, to the extent of one million of dollars, "to meet casual deficits or failures in revenues, or for expenses not provided for," and which was intended to be used in emergencies, and to be replaced immediately afterward, was speedily exhausted by permanent loans. Every sort of device has been since resorted to to supply the defect.

To change the existing systems, to cut off the fungus-growth of unconstitutional and illegal, of loose and improvident practices without impairing the efficiency of public works and without unnecessary harshness to individuals, was a matter of great difficulty. To make investigations in particular cases so thorough and so conclusive that they could be the basis of action in reference to existing contracts or work partially completed, was impossible before the legislation proposed must necessarily be acted on.

Of the Bills that have come before me for action, several deserve some mention.

1. The Tax and Appropriation for the Payment of Principal and Interest of the Canal Debt.

The Bill for this purpose, as prepared by the fiscal officers of the State, and enacted by the Senate and Assembly, received my signature.

2. Tax to pay the Floating Canal Debt.

This provision in the law imposing the State taxes was for a debt existing as early as 1859, which will be extinguished during the present year. The tax for that purpose in 1874 was one tenth of a mill, or $216,930.79. The tax for the same purpose for this present year is one eighth of a mill, or $271,163.49. The increase is $54,239.70.

3. Canal Awards and Certificates of Indebtedness.

This Act is Chapter 263, and is entitled "An Act to authorize a tax of one fifth of a mill per dollar of valuation for the payment of awards of the Canal Appraisers, of the Canal Board, and of the Board of Canal Commissioners, and to pay the certificates of indebtedness and interest now outstanding." It is substantially the same as Chapter 462 of the Laws of 1874, and bears the same title. In the main, both of these Bills provide for the payment, as they become payable, of the awards of the canal appraisers, or other canal officers specially charged with the duties of making awards. The canal appraisers usually issue certificates for the awards made by them in a semi-negotiable form. They are the agents of the State, and form the tribunal instituted by the State for the decision of the controversies submitted to them.

Notwithstanding the great suspicion that has attended cases in which such awards are made, it was obviously impossible for me, during the ten days in which the Bill was in my hands, with the best help I could obtain, — and probably it would be impossible in a longer time, — to get information which would justify me in attempting to re-try these cases, which had been adjudicated by the lawful tribunal, or would justify me in vetoing a Bill providing the means to pay these awards next year, if, in the mean time, no grounds should appear for withholding or resisting such payments.

These Bills contain another item, which is the result of a practice very objectionable. About one fourth of the funds

provided by the Act of the present year is for the payment of certificates outstanding in a semi-negotiable form, for work done in excess of the appropriations for the payment of such work.

The Appropriation Bills of 1874 and several years previous, under which this work was done and these certificates issued, contain an express prohibition of the letting of contracts for any amount beyond the appropriation. The provision is in the following words: "No more money shall be expended on the works hereinbefore enumerated than is above appropriated; and it shall not be lawful for officers having in charge the execution of the said works to make any contracts whereby any expenditure in excess of the appropriation will be incurred, or any further appropriation for the same rendered necessary."

Notwithstanding these prohibitions, the public officers go on with work in excess of appropriation; and every year a Bill is introduced into the Legislature, providing for the payment of certificates of indebtedness assumed to be issued in behalf of the State for work done in excess of any appropriation, and expressly prohibited by the Appropriation Acts. And the public have been in the habit of accepting these certificates as if they were regular and legitimate issues of obligations of the State. Banks advance money on them, and private parties purchase them and hold them as investments.

The State, doubtless, by the exercise of its legislative power, has authority — which no municipal or other inferior officer would have — to provide for the payment of such certificates on its general view of equity applicable to the case. Indeed, as the State has that quality of sovereignty that makes it incapable of being sued, it can be under no obligation except that of an equitable nature. While it may be admitted that a special case may sometimes occur in which the public good may require an expenditure to be made outside of the laws, in the confidence that the State will afterward legalize, protect, and pay it, the existence of a common practice, an

established habit, by which the public officers transcend their powers, disregard the salutary restrictions of the laws and the Constitution, and issue pretended obligations of the State, cannot but be regarded as extremely objectionable.

It was quite impossible, while this Bill was pending before me, to inquire into the equities attaching to such certificates in their origin or in their transfer as they passed to the pledgees or to the new owners in the course of business. I therefore, not without some reluctance at any sanction of such a system, and not without much distrust of awards of which I saw no means of resisting the payment, allowed this Bill to become a law. If investigation shall disclose anything to enable the State to withhold payment in such cases, that defence will be equally available until the tax shall be collected next year and payments actually made. The Canal Auditor, while advising the sanction of this Bill, assured me that he should be vigilant to avail himself of any just ground of protecting the State from wrong in the premises. My conclusion, therefore, was to content myself with calling the attention of the public officers to the impropriety as well as the illegality of such a system, and to exert whatever influence I have against its continuance.

Such appropriations ought not hereafter to be allowed, unless in cases where there can be a clear excuse for an expenditure not provided for by law in some actual public necessity, and where it can be affirmatively shown that the State received a full consideration and is under a clear obligation of equity to make provision for a payment which it had not previously authorized.

The tax and appropriation in the present year for canal awards and certificates of indebtedness is one fifth of a mill, or $433,861.57, against a tax and appropriation for the same purpose last year of seven thirty-seconds of a mill, or $474,536.09. The reduction is $40,674.52.

4. The Reappropriation Bill.

The Reappropriation Bill is fully discussed in the memorandum appended to it. That Bill reappropriates, after the items struck out are deducted, $340,079.19, against $917,319.63 reappropriated last year. The diminution of reappropriations is $577,240.44. The amount raised by former taxes now reclaimed into the treasury is $67,765.69.

5. Appropriations for Expenses, Collection, Superintendence, and Ordinary Repairs.

This Bill (Chapter 260, Laws of 1875) passed the Assembly and Canal Committee of the Senate, with but a trifling reduction from the appropriations of last year, exclusive of the $250,000 provided last year as a separate item for deficiencies.

The budget for extraordinary repairs as originally prepared proposed an expenditure of $1,400,000. In the ordinary course of things, the additions which would have been made to it during its passage through the two Houses by the friends of local objects able to influence those bodies would probably have swollen it to as great a magnitude as the Bill of last year for the same purposes, which amounted in tax to nearly $1,900,000, and in appropriation to nearly two millions.

It was in this condition of things, when the routine, which had become so firmly established, was likely to bring for my action bills which could not be totally rejected, and perhaps could not be effectually altered, and which would practically continue the existing systems of canal expenditure against which I had objected in my Annual Message, and invoked retrenchment and reform, that I felt it my duty to enter upon the investigation, which resulted in the Special Message of March 18, 1875.

The discussion which ensued generated a spirit in the legislative bodies and among the people that triumphed over and broke up the routine hitherto dominating, which, like an

enchanted ship moving onward in its course without a crew, was drifting us into a repetition of all the improvidences, abuses, and frauds so long infesting this department of the public administration.

The results of this discussion will be found in a reduction of the appropriations for expenses of collection, superintendence, and ordinary repairs, and in the extinction of expenditures for extraordinary repairs. The appropriation for expenses of collection, superintendence, and ordinary repairs for the present year will be $1,109,150, and $150,000 for the Upper and Lower Mohawk aqueducts and the sixteen locks, against $1,424,510 for the same objects last year, besides $250,000 for deficiencies. The reduction will be $415,360.

6. Appropriations for Extraordinary Repairs of Canals.

This Bill, by the revolution which it had undergone before its passage and the consequent rejection of it from Executive sanction, will in its final disposition allow a saving to the State of nearly two millions of dollars. No retrenchment could possibly be so satisfactory.

I am convinced that, of the eleven millions of outlay levied by taxes for extraordinary repairs during the last five years, very little has resulted in any practical utility to the State, — in my judgment, not over one third, probably not more than one fourth, very possibly less than that proportion of this enormous sum. I do not mean that so large a share of this expenditure has been realized as plunder by those dealing with the State. It has often happened that jobs practically useless to the State have been contrived and lobbied through the Legislature in order to furnish fat contracts with liberal profits, where the money expended and the work performed were a waste by the State far larger than the profit realized by the contractors. In regard to a very large share of such work, what was not stolen was wasted, and what was not wasted was stolen.

It cannot but be gratifying that in rescuing to the taxpayers of the State such enormous sums, we abandon or lose no real utility; we withhold no expenditure that will hereafter need to be made; we abstain from nothing that can conduce to the prosperity of our people or to their happiness; we merely pluck up by the roots the noxious growth of peculation, fraud, and wrong.

I had caused to be carefully examined the forty-one several items of expenditure for which this Bill provided when it came to me for signature, and had resolved to object to more than half the amount appropriated, even if I should conclude to let any part of the Bill stand. A larger examination and more reflection, however, brought me to the conclusion that it was a duty I owed the people of this State to refuse my approval to the entire Bill. There are items in it which I should be content to allow if the Bill had provided any mode of lawfully paying for the expenditures which these items involve. But there is nothing which is equitably due to individuals that this Bill would be effectual to pay; there is nothing proposed therein which is at the present time essential to the safe and efficient working of the canals.

Senate Bill No. 331, *entitled*, "*An Act in relation to Police Justices in the City of New York.*"

Not approved.

Among the acts concerning the administration of justice in the city of New York that have come before me are three.

The first provided for the election of an additional criminal judge, with powers similar to those of the city judge, and the appointment of an additional assistant to the district attorney. It was urged as necessary by the Recorder, City Judge, District Attorney, and others. It was finally assented to on condition of a retrenchment in the salaries of the existing and other officers which defrayed the expense of the new officers, and

made, in addition thereto, a net saving of twenty thousand five hundred dollars to the city.

The second was Assembly Bill No. 149, in relation to courts of record, giving the sheriff the service of process issued out of courts of record, and was understood to operate on cases arising in the Marine Court of the city of New York. The jurisdiction of the Marine Court — except as to marine causes — and its procedure were originally similar to those of courts of justices of the peace. The marshal was the constable, who served processes in the petty cases arising in that tribunal. A series of acts have revolutionized the position of the Marine Court. Its jurisdiction was early extended from fifty dollars to two hundred and fifty dollars. In 1872 it was enlarged to one thousand dollars, and by an Act of the present session it was further enlarged to two thousand dollars. It has become a great tribunal, possessing the external characteristics of the Supreme Court, with six judges, a clerk, deputy-clerk, twelve assistants, four stenographers, an interpreter, and twelve attendants, and holding general terms, special terms, trial terms in parts, and chambers. It has absorbed a large share of collection cases; and, with the recent enlargement of its jurisdiction to two thousand dollars, will become the great "common pleas" of the people. This court has outgrown the constable. The execution of its process occupies a domain which, in all the other counties of the State, is assigned to the sheriff, and was assigned to him here until his functions were superseded by the change of a justice's court into a great common pleas.

In the controversy which this question produced were, on the one side, the marshals, many of the attorneys practising in this court, and others whom their influence could affect; on the other were the sheriff, most of the judges, many of the lawyers practising in the higher courts, and the Bar Association. Among numerous papers submitted was a copy of a resolution adopted by that body at their March meeting, as follows: "Resolved, that in the judgment of this Association all process of attachment and replevin, orders of arrest, and writs of

execution issuing out of courts of record of this State or city, and to be executed within the city of New York, except when the sheriff is a party, should be executed by the sheriff of the City and County of New York."

On principle there would seem to be no reason for creating or maintaining an anomaly in the system already existing throughout the State. If there are abuses in the sheriff's office, they should be corrected; if the system is wrong, it should be changed: but there is no reason why a homogeneous system should not be maintained. If the sheriff's office is stripped of its usual functions, the cost of its support will be thrown upon the county. The recent Bill enlarging the jurisdiction of the Marine Court is the consummation of a series of progressive changes which have revolutionized the character and position of that court, and by a logical necessity draws after it an application of the general rule as to its processes.

The present Bill adds two new police justices to the eleven now existing. The necessity on public ground for the measure is the subject of some difference of opinion, but it cannot be said to have been established. Eight of the ten justices — the office of one being vacant — have made a communication to me in which they state that the business for the six months ending April 30, 1875, was nearly 14 per cent less than last year; that the Court of Special Sessions can, with the present number of justices, be held daily, if expedient; and that "any increase in the number of police justices is quite unnecessary, and would serve to create additional expense, to be borne by the city without any corresponding benefit." This communication is accompanied by a statement of the Clerk of the Court of Special Sessions as to the amount and condition of the business of that court which seems to confirm the views of the justices. Nor is the Bill commended as forming part of a system, the general operation of which would improve the methods and lessen the excessive expenses of the administration of justice in the city of New York.

Senate Bill No. 159, *entitled*, "*An Act in relation to the State Prisons and Penitentiaries.*"

Not approved.

The first two sections of this Act provide, in substance, that a person sentenced to imprisonment for life, or for a term of twenty-five years or upward, who has conducted himself properly in prison, may, at the expiration of fifteen years, be discharged by the Governor from actual confinement, and that the residue of the term shall be remitted, unless he is convicted of some other crime, or fails to receive a full pardon within ten years.

Although the discharge is in the discretion of the Governor, he would, as at present in the case of prisoners confined for shorter terms, ordinarily feel bound by the expression of the legislative will, and uniformly release the prisoner upon receiving from the proper officers a certificate of his good behavior.

While some slight provision is made for the sentence of a convict guilty of crime committed after his discharge, it is evident that such provision would be rarely, if ever, executed; and if executed, that it would be rather as a punishment for the latter offence than for that of which he was originally convicted. The practical effect of these sections, therefore, would be to reduce the punishment for the offences now punishable by imprisonment for life, or for twenty-five years or upward, to imprisonment for fifteen years in the case of a convict conducting himself properly in prison.

The object of these provisions is to offer to life convicts the same inducements to good conduct that are held out to other prisoners; and it is thought that their adoption would tend greatly to promote the discipline of the prisons. It may be that this would be the case, and that the enactment of this Bill would tend to secure good order among the convicts; but, in my opinion, this anticipated advantage would be much more than counterbalanced by other and graver considerations. To the

heinous crimes of murder in the second degree, rape, and arson in the first degree should be attached a punishment proportionate to their enormity. In many other States and countries that punishment is death. Formerly in this State the same dread penalty was exacted. In my judgment, the punishment should not be less than imprisonment for life. In saying this I try to realize the suffering of a life-long incarceration; but I also consider the nature of these crimes. As a general rule, persons guilty of these offences are unfit ever again to associate with their fellows. A man who proposes to himself the commission of either of these felonies should have before him, as an element of his calculations, the prospect of being forever immured within the walls of a prison.

The terror of the law, which now deters men capable, through revenge, passion, or lust, of committing these crimes, would be greatly lightened by a change which provides for their liberation, even at the end of the long period of fifteen years.

Even for the sake of promoting good order in the prisons, I cannot assent to an enactment which tends to lessen the just sense of the atrocity of these crimes, or of the wickedness of those who commit them. In particular cases, where the circumstances will allow, Executive clemency may now be exercised; and in this manner only should any proper indulgence be granted.

Assembly Bill No. 373, *entitled*, "*An Act to amend Chapter* 219 *of the Laws of* 1871, *entitled* '*An Act to provide redress for words imputing unchastity to Females.*'"

Not approved.

The second section of this Bill declares that every person who, either verbally or by written or printed communication, accuses a female of unchastity is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both. It contains no qualifying words.

At common law, spoken words are not the occasion of a criminal prosecution. A man may orally charge another with rape or murder, and he is thereby made liable to only a civil action.

In libel, where the defamation is deliberate, in an enduring form, and generally obtains considerable publicity, it is perhaps right that the defamer should be liable to criminal prosecution, although the reason given in the books for such liability, — namely, that the publication tends to produce a breach of the public peace, — is somewhat fanciful. It has, however, been doubted by many jurists whether, on the whole, any good has resulted to the public, or even to the parties immediately concerned, from the trial of an indictment for libel.

Where the defamation is oral, made in words which pass with the breath in which they were uttered, made usually in the heat of discussion or controversy, greatly liable to be misunderstood or misrecollected, I can see no reason for making it a public offence.

If this statutory slander, created by the Act of 1871, is to be made a criminal offence, I can see no reason why slander at common law should not be. To allow this would foment neighborhood quarrels, encourage litigation, block the courts with trifling causes, and benefit no one, except the class of small lawyers who thrive on this sort of cases.

But there is another objection to this Bill, which, with me, is conclusive. It does not permit the person charged with the offence created setting up in his defence a justification, or of his putting in the plea of a privileged communication. If a father should inform his son of the lewdness of a woman whom the latter was about to marry, neither the truth of the allegation nor the privileged nature of the communication would be a defence to an indictment against him. If, contrary to the general rule, oral defamation of this particular character is to be made punishable criminally, the prisoner should at least have all the latitude of defence which is allowed to a defendant upon an indictment for libel at common law.

Senate Bill No. 156, *entitled,* "*An Act to provide for the Payment of certain Certificates issued to the Militia of the State for services in the War of* 1812."

Not approved.

After the law imposing taxes for the support of government had passed, after all the Appropriation Bills had passed, after the Supply Bill had gone to the Committee of Conference, and the financial means of the State had become fixed, and two days before the final adjournment of the Legislature, this Bill, appropriating $100,000, came into the Executive Chamber. The next day another Bill, appropriating $60,000, appeared.

The origin of this Bill is remarkable. In 1857, by Chapter 597 of the Laws of that year, a commission was appointed to ascertain and determine the sums due for contingent expenses of the militia and Indians rendering material services in the war of 1812. That law provided that, when the amount of these claims should be ascertained, proper measures should be adopted to obtain payment thereof from the Treasury of the United States. That law also provided that certificates, with the name, residence, and amount due of claimants, might be issued, and that upon such certificates the comptroller might indorse the statement that the amount thereof should be paid as soon as the money should have been received by the treasurer of this State from the Government of the United States in the satisfaction of such claims.

Chapter 176 of the Laws of 1859 changed the *personnel* of the commission, but it did not change the nature of the relation which the State bore to the transaction. It provided for a distribution *pro rata* among the claimants of such sum as should be received from the United States.

In 1866 a concurrent resolution was passed by the Legislature, asking Congress to appropriate $877,629 to pay these claims. Certificates, expressing on their face that their payment was to be made in pursuance of the Act of 1859, were issued. In 1869 an appropriation of $50,000 was got through

the Legislature, for the payment of such certificates. In 1870 another appropriation of $100,000 was made, and in 1874 a further sum of $100,000.

The Comptroller of the State has communicated to me the information that the addition of this appropriation to the charges now existing against the treasury will create a deficiency in the means for their payment. The $250,000 which has been appropriated has not sufficed to pay in full the first class of the beneficiaries. It is estimated that not less than $1,000,000 more would be required completely to satisfy the claims of all the classes of beneficiaries. It is quite clear that this Bill, under such circumstances, ought not to become a law.

Senate Bill No. 185, *entitled*, "*An Act to amend an Act entitled*, '*An Act to amend Chapter* 467 *of the Laws of* 1862, *entitled*, "*An Act to prevent the Adulteration of Milk, and prevent traffic in impure and unwholesome Milk*," *passed May* 2*d*, 1864.'"

Not approved.

This Bill re-enacts Section 4 of the Act of 1862, omitting the prohibition of the sale of swill milk. The Board of Health of the city of New York apprehend that it might legalize the dilution of milk by water. It certainly would legalize the sale of milk obtained from cows fed on distillery slops. Protests against such an enactment have been received from the Board of Health of New York, from the Society for the Prevention of Cruelty to Children, from the Society for the Prevention of Cruelty to Animals, and from the Sanitary Superintendent of Brooklyn. Extracts from medical authorities opposed to the use of such milk have been submitted. On the other hand, certificates from eminent chemists favoring such use, and fortifying their opinions by analyses, have also been submitted.

It is enough to say that a strong and general public judgment adverse to allowing the sale of such milk was formed

some years ago, and there is now no reason to suppose that judgment has been changed. The subject was the occasion of an extraordinary excitement among the people of New York and Brooklyn, which was appeased by the enactment of the prohibition now proposed to be repealed. If in any respect that legislation can be safely or wisely modified or qualified, the change should be made only after the fullest knowledge by the public, the most ample opportunity for discussion, and the most careful consideration by the authorities having the care of the public health. Nothing of this kind has been done. This Bill, if it should become a law, would be a complete surprise to the people. It cannot receive the Executive sanction.

Senate Bill No. 303, *entitled*, "*An Act to authorize Cities to provide Railways for rapid transit of persons and property, and to create Corporations for that purpose.*"

Not approved.

Three bills providing for rapid transit were before me on the adjournment of the Legislature. The one amending the acts relating to the New York Elevated Railroad was carefully considered. In its present form it is free from the objections alleged against the Bill of last year. The apprehension that it might allow of the use of the Boulevards has been removed by provisions inserted in the general law, commonly known as the Husted Bill, and by acts done or to be done under those provisions. On the whole, the Bill seems to be as free from just objections as such a measure is ever likely to be. The road, so far as now constructed, is used with great convenience and advantage by many of our most intelligent citizens, whose opinions, founded on their own experience, have been submitted to me. The Bill has been signed in advance of the general Bill, in order that its provisions should be controlled by the general law wherever the two are in conflict.

In choosing between the two general bills designed to provide for rapid transit, I have no hesitation in preferring

Assembly Bill No. 739, commonly known as the Husted Bill; nor have I any doubt that it is inexpedient to establish two general systems.

It is therefore necessary to disapprove of this Bill, independently of the grave objections of a specific nature which exist against it.

Assembly Bills Nos. 186, 247, 488, 489, 607, *amending Chapter* 721 *of the Laws of* 1871, *entitled*, "*An Act to amend and consolidate the several Acts relating to the preservation of Moose, Wild Deer, Birds, and Fish; No.* 312, *relating to Fishing in Tonawanda Creek, in the County of Wyoming; No.* 640, *relating to Fishing in the waters of Clinton County, except Lake Champlain; and No.* 718, *relating to Fishing in the Niagara River, within the County of Erie.*"

Not approved.

Although a general law was passed so late as 1871, regulating the killing of game and the taking of fish, the whole subject is now in the greatest confusion, owing to the numerous and ill-considered acts which have since been enacted.

The Act passed at the late session, extending the powers of boards of supervisors, confers upon these boards the power of regulating these subjects within their respective counties. It may be desirable that, where a body of water is situated in more than one county, the Legislature of the State should prescribe the regulations for fishing therein. No one of the bills now before me is, however confined in its operation to such a case.

The belief that the power is likely to be as well exercised by the boards of supervisors as by the Legislature of the State, is strengthened by the fact that four of these bills prescribe the rules for fishing in Oneida Lake, each in a manner different from the other, so that if they were all signed, the gentle fisherman would have to inquire which was signed last, in order to ascertain by what rule to govern his conduct.

Assembly Bill No. 417, *entitled*, "*An Act to regulate the use of the Dock or Pier at the foot of Jersey Street, in the Village of New Brighton, in Richmond County.*"

Not approved.

The North Shore Staten Island Ferry Company is in possession of the dock or pier mentioned in the title of this Bill, under color of title derived from the State, and claims to own the same in fee-simple absolute, and to have the right to the exclusive use thereof.

This Bill provides that any vessel plying between New York and the north shore of Staten Island may land and receive passengers or freight at such dock, and commands the police commissioners to remove any obstructions that may now be or may hereafter be placed thereon. It also imposes a penalty of two hundred and fifty dollars upon any person who shall maintain or place any obstruction on said dock which shall prevent, or who shall in any way prevent, the landing of passengers or freight at such dock from any such vessel.

The promoters of this Bill allege that this dock is subject to public use; but I have been furnished with no facts substantiating that allegation. If it is true, the public have a plain remedy through the courts, and they should resort to the courts in the assertion of their rights. The Legislature ought not to be asked to determine what is purely a judicial question. Legislative adjudication in respect to private rights is worse than judicial legislation in respect to public matters.

Assembly Bill No. 617, *entitled*, "*An Act supplemental to Chapter* 319 *of the Laws of* 1848, *entitled*, '*An Act for the Incorporation of Benevolent, Charitable, Scientific, and Missionary Societies*,' *and the several Acts amendatory thereof.*"

Not approved.

The Act of 1848, as its title implies, is a general Act for the incorporation of benevolent, charitable, scientific, and

missionary societies, and its provisions have, by several amendatory acts, been extended so as to include corporations for various other purposes.

By this Bill, any two or more of such corporations are authorized to consolidate themselves. Thus a benevolent society may consolidate with a scientific society, or a missionary society with a charitable society. The members of one society, by becoming members of another in sufficient numbers to control its organization, may absorb the property and franchises of the latter, and thus frustrate the purposes of those who have contributed to its support.

It is the evident intent of the Act of 1848 that a corporation formed thereunder shall exercise the functions of only one of the classes of corporations therein provided for. This Bill allows the existence of a corporation having for its objects all the purposes for which any of the numerous classes of corporations provided for in the Act of 1848, and the acts amendatory thereof, may be formed to promote.

Assembly Bill No. 122, *entitled,* "*An Act for the Improvement of the Navigation of the Hudson River and Catskill Creek, and to make an Appropriation therefor.*"

Not approved.

This Bill came to the Executive Chamber the day before the final adjournment of the Legislature. The law imposing taxes for the support of the Government had passed; the Appropriation Bills had passed; the Supply Bill had gone to a committee of conference; the financial means of the State to meet expenditures had become absolutely fixed. Any expenditure not contemplated at the time of the passage of the Tax Bill was necessarily unprovided for, and would either not be met, or would create a deficiency.

A communication was subsequently received from the Comptroller of the State, in which he advised me as follows: "I am informed that the Old Soldiers' Bill (War of 1812) and the

Hudson River Appropriation Bill were both passed after the Tax Levy Bill was passed; and if such is the case, there will be no money in the treasury to meet them." I was further warned that such additions had been made to the Supply Bill, that unless they should be reduced, the provisions to meet them would be insufficient.

No duty is more clear or more imperative than that of keeping the expenditures within the means provided. The Constitution has prohibited the creation of a debt in any other mode than the one prescribed. A floating debt produced in the practical operation of the government by recklessness as to the methods by which the two ends can be made to meet is bad financiering, is a deceptive system, a disregard of official duty, and a violation of the Constitution.

Aside from these considerations, which are in themselves conclusive, it would seem to be wise that the means taken to improve the navigation of the Hudson River, which is an object of just public interest, should be carefully considered, and the plans adopted should be such as are certain to secure the accomplishment of the object. The plans should be made in reference to the improvements being carried on for the same purpose by the Government of the United States.

On the whole, considering that the present Bill would either be futile or would lead to the objectionable consequences pointed out, the subject may be wisely left to the more mature consideration of the next Legislature.

Senate Bill No. 230. — *An Act to provide for the building of a town house or hall in the Town of Fort Covington, in the County of Franklin.*

Not approved.

Senate Bill No. 131.— *An Act to extend the operation and effect of the Act passed Feb.* 17, 1848, *entitled, "An Act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."*

Not approved.

Assembly Bill No. 519. — *An Act to provide for the payment for the use and occupation of armories and drill-rooms in the City and County of New York.*

Not approved.

Assembly Bill No. 538. — *An Act to amend an Act entitled "An Act to amend the Act for the protection and improvement of the 'Seneca Indians' residing in the Cattaraugus and Allegany Reservations in this State," passed Nov.* 15, 1847.

Not approved.

Assembly Bill No. 734. — *An Act to authorize the Coroners of the County of New York to employ a Stenographer in certain cases.*

Not approved.

Assembly Bill No. 613. — *An Act to incorporate the Bethlehem Mutual Insurance Association, and for other purposes.*

Not approved.

Senate Bill No. 228. — *An Act to extend the operation and effect of the Act passed Feb.* 17, 1848, *entitled, "An Act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes."*

Not approved.

Assembly Bill No. 271. — *An Act supplementary to an Act entitled, "An Act to incorporate the Manhattan Loan and Trust Company of the City of New York," passed June* 26, 1873.

Not approved.

Assembly Bill No. 709. — *An Act to regulate pilotage for the Port of New York.*

Not approved.

Assembly Bill No. 404. — *An Act to amend an Act entitled, "An Act to re-enact and amend an Act entitled, 'An Act to provide for the Annexation of the Towns of Morrisania, West Farms, and Kings Bridge, in the County of Westchester, to the City and County of New York,'" passed May* 6, 1874.

Not approved.

Assembly Bill No. 724. — *An Act to amend an Act entitled, "An Act for the Preservation of Fish in the River St. Lawrence," passed June* 12, 1873.

Not approved.

Assembly Bill No. 78. — *An Act to provide for the payment of an award due from the City of Brooklyn to the Brooklyn Park Commissioners for lands taken from Prospect Park for reservoir purposes.*

Not approved.

Assembly Bill No. 432. — *An Act relating to armories in the City of New York.*

Not approved.

Assembly Bill No. 606. — *An Act to establish a Board of Fire Commissioners for the Village of West Troy, in the County of Albany.*

Not approved.

Assembly Bill No. 47. — *An Act in relation to Railroad Commissioners in the several Counties of the State.*

Not approved.

Assembly Bill No. 741. — *An Act to provide for the recording of certain decrees in partition suits in the clerks' offices of certain Counties of this State, and for the alphabetical indexing of the names of the grantors and grantees of deeds, mortgages, and other instruments recorded and to be recorded in said clerks' offices.*

Not approved.

Assembly Bill No. 235. — *An Act to amend the Charter of the City of Brooklyn.*

Not approved.

Assembly Bill No. 587. — *An Act supplementary to "An Act in relation to storage and the keeping of combustible material in the City of New York, the use and control of the Fire Alarm Telegraph, the incumbrance of hydrants and other purposes connected with the prevention and extinguishment of fires therein, and imposing certain powers and duties upon the Board of Fire Commissioners of the said City," passed April* 26, 1871.

Not approved.

Assembly Bill No. 672. — *An Act to amend Chapter* 379 *of the Laws of* 1848, *entitled, "An Act to simplify and abridge the practice and proceedings of the Courts of this State."*

Not approved.

Assembly Bill No. 256. — *An Act to amend Chapter* 134 *of the Laws of* 1851, *entitled, "An Act in relation to Weights and Measures."*

Not approved.

XL.

In the summer of 1875, and after disposing of the business which the Legislature had bequeathed to him, Governor Tilden determined to yield to what seemed a general desire of his friends in the western part of the State, that he should make a tour through the canal counties, which had so deep an interest in the success of his efforts to reform the abuses from which those counties, more perhaps than any others in the State, were the sufferers.

He left Albany on the 8th of August, in company with the Lieutenant-Governor, William Dorsheimer, and proceeded directly to Buffalo. On the line, both going and returning, the stations were thronged by the people, who were curious to see the man who had dared to beard the Canal Ring, which had hitherto successfully defied the power of every adversary. Besides numerous private entertainments given at Buffalo, he accepted an invitation to a public reception from the Board of Trade on the 10th instant, at which formal addresses were made by Mr. Cyrus Clark, the president, and George B. Hibbard, one of the officers of that body. In his reply to their hospitable greetings, the Governor urged them to sustain him in his efforts to protect the canals and to elevate the standard of public and official morality in the country, by sending to the Legislature men who would co-operate with him in these efforts, and not obstruct him.

VACATION SPEECHES. — BUFFALO.

Mr. Hibbard, Mr. President and Gentlemen of the Board of Trade, — I recognize in you, not merely the members of an important commercial body; not merely the business men of the noble city of Buffalo, but the representatives of that great system of intercommunication by which the products of the fertile and distant West and the populous East are exchanged, — the common agents of those great communities which occupy the northern section of our continent. The expense of conveying food to the consumer is often greater than the original cost of raising it. Whatever, therefore, cheapens transportation, adds to the productiveness of human labor as much as increased fertility of the soil or increased geniality of the climate. Standing here in Buffalo and turning the eye into the Far West, we behold a series of lakes, forming the finest inland navigation that ministers to the wants of man, which, if stretched out in a line, would extend more than half the voyage from New York to Liverpool. On the east, by the Erie Canal and the placid waters of the Hudson, the system is extended five hundred miles to the harbor of New York. On the west it is connected, by a complicated system of railways, with every minute part of that most magnificent area of virgin soils which has been the theatre of the arts and industries of civilized life, — a region in which Nature has poured out her blessings with boundless prodigality, and which is destined to be the seat of many millions of prosperous and happy people. Taken together, this system is as long in its whole extent as the track across the ocean —

the ocean from the Old World to the New. Consider, my fellow-citizens, on what a grand scale the interests and business of our country are organized. Shall we protect the Erie Canal, which forms one of the most important lines of this system, from spoliation? That is the question for the business men of Buffalo to consider. You came down to Albany last winter and asked for a reduction of tolls. Ever-anxious to cheapen the cost of transportation and transit, when I came to look into the question, with a desire to carry out your wishes, I found you were confronted by a body more numerous and more powerful than yourselves, — the taxpayers of the rural districts of this State, not immediately benefited by the canals, in respect to whom the burdens of taxation had become nearly unendurable, and were bearing with more oppressive severity every day. I ventured, therefore, gentlemen, in my Special Message of March 18, to suggest a plan which I thought would harmonize the various interests at stake. I found there were abuses and maladministration, frauds and peculation, which not only consumed the entire surplus revenues of the Erie Canal, but burdened our taxpayers with more than two millions a year, levied by taxes, under pretence of improving the public works. I proposed, therefore, that we should, on the one hand, reduce the tolls to the extent of five or six hundred thousand dollars, and, on the other, remit a million and three quarters of taxes. Six months have elapsed, and the fruits of that controversy have secured you the reduction of the tolls you asked for, and remitted to the taxpayers two and three quarter millions of the burdens imposed on them last year.

I propose to you to-day, gentlemen, that we should continue this policy. If the people of this State will send to the next session of the legislative bodies representatives who will honestly co-operate in this great work, I here to-day promise them and promise you that, whereas we reduced the taxes last year from seven and a quarter to six mills, next year we will put them down to four and a half, and even four mills. Afterward they can be reduced still lower. You commercial men of

Buffalo have not only the common interest which every taxpayer has, but also the special advantage of further enfranchising trade and improving the means by which it is carried on. We shall save a fund large enough to answer every object of this description, and go forward and make this great and noble State and its institutions all that it has a right and is destined by Providence to become. I know, gentlemen, that attempts have been made to discourage the people in this great work. We have been told that nothing has been accomplished; that nothing can be; and that the people are to remain bound with withes, to be the prey of those who consume the fruits of taxation. In answer, I point to the practical results of six months of reform. What are they?

First, we have wounded and crushed a system of abuse, maladministration, fraud, and peculation that has fattened upon the public works, the transporter, the consumer, and the taxpayer. And if the people of this State are true to themselves, that system, once broken, will never be revived. In the second place, there has been enacted a series of laws to bring to account the public agents and official persons and punish their malversations, the efficacy of which, if faithfully administered by the courts, will soon be seen. In the third place, we have reduced the tolls and remitted the taxes to the large extent I have mentioned. In the fourth place, measures have been instituted to hold to account the public plunderers. These measures have been taken as early and as rapidly as possible, and are going on to consummation. I am glad, myself, to be reproached for being too slow. I have been as fast as I could, and have given all my time to your service; but I rejoice to be reproached for being too slow, because it indicates to me that the people are impatient to consummate the great reform.

Fifth, and lastly, gentlemen, there is something higher, more important, more noble, more deeply concerning human society than even these material advantages. We have lifted the standard of public and official morality in the country; we have awakened a sense of justice and duty in the people; and are

rousing public opinion to demand better government and purer administration everywhere. Gentlemen, the cause will not fail. In the last session it was often betrayed, sometimes defeated, and generally obstructed; but it will go on to a complete triumph, which will be a blessing to the whole of these five millions of people who live within the jurisdiction of this State. Whoever shall dare to obstruct or oppose it, or stand in its way, will fall, not to rise again. I know there are men of selfish interests who have not yet learned that the old age has gone out and the new age has come in. There are public men seeking popular favor who still think that the way to success and honor is to combine selfish interests, — to pile Canal Ring upon Tweed Ring, and so rule the people of this free State. According to the measure of my ability, I humbly represent the common sense of the people of this State, — the farmers, the mechanics, the laborers, the men of business, — the moral sense and purpose of the community against its selfish and fraudulent interests. Now, men of Buffalo, I ask you to-day to consider what is to be your part in this work? While about your various callings and industries, you leave the government to take care of itself, and men who mean to make money by plundering you, give their nights and days to study out the methods; they are always at conventions and caucuses; they go to the Legislature, and while you are reposing in fancied safety, are plotting against your interest and rights. If you will permit me to offer a suggestion, — I do not assume to advise, I only say that when bad men combine, good men should unite. And if you will be as earnest, and determined, and persistent in demanding that the right shall be done, politicians will court your favor, and not the favor of the Canal Ring or any other Ring. What concern have you by what name a man is called who goes to Albany to misrepresent your interests and duties? Is it any satisfaction to a Republican that that man is called a Republican, or to a Democrat that he is called a Democrat? Does it make any difference what livery he wears to serve the devil in? I say you have but to assert your

rights, and they will be respected; and when the parties to which you belong come to make their nominations, if there be on the tickets any one not true to you, you have but to exercise the reserved right of the American citizen, — to vote for somebody else.

Gentlemen, I avail myself of this occasion to thank the Board of Trade for their kind invitation, and the citizens of Buffalo generally for the prodigal hospitalities that have been bestowed on me during the two days I have been visiting my friend Lieutenant-Governor Dorsheimer, who is about to take up his temporary residence in Albany. I thank you for your kindness to me, which I ascribe not so much to myself personally as to the cause which I serve.

XLI.

On the 11th of August, about eight o'clock in the evening, Governor Tilden reached Syracuse, on his return from Buffalo. As soon as his arrival became known, the citizens began to throng toward his hotel; and by nine o'clock the square in front of it was filled, and loud calls were made for the Governor. He finally came forward with the Mayor of the city, by whom he was presented to the people. As soon as the applause and cheers which his appearance provoked had a little subsided, the Governor proceeded to address them. The fact that Syracuse was the home of the most conspicuous and influential members of the Canal Ring lent special significance to the Governor's remarks.

VACATION SPEECH — SYRACUSE.

Citizens of Syracuse and the County of Onondaga, — If I had anticipated that I should be called upon to-night to speak to such a vast assemblage of people as I see before me, I should have been more economical of conversation on the cars. I am glad, however, to meet you. I am glad to see that the question of reform in the administration of the public affairs in this State is awakening a deep interest in the minds of the people.

It is not necessary for me to draw your attention in detail to the particular abuses in regard to the canals of this State. You have become, alas! too familiar with the situation. Here, under your own eyes and your own observation, these transactions have been carried on in open day by a combination that have sought to rule the State. I am sure, by your coming here to-night, that you are determined there shall be thorough and effectual reform in these matters. Fellow-citizens, so far as depends upon me, I wish to say to you that nothing shall be withheld. Your cause will be carried forward and onward. All the force of the law will be exercised to procure for you your rights, and to punish those who have violated them.

I was called on this morning to speak some words of encouragement and hope to four hundred little boys in the Western House of Refuge. During all my journey I have been frequently followed by persons asking for their friends and for those in whom they were interested a pardon from the penitentiaries and State prisons. I have been compelled to look into such

cases to see who are the inmates of these institutions and of what they have been accused, and to ascertain what it is that constitutes the wrong to society of which they have been convicted. When I have compared their offences, in their nature, temptations, and circumstances, with the crimes of great public delinquents who claim to stand among your best society, and are confessedly prominent among their fellow-citizens, — crimes repeated and continued year after year, — I am appalled at the inequality of human justice. The effort to give you redress has been for the last three months derided and scoffed at. We have been told that nothing would come of it; that the people would fail; that their rights would not be maintained; and particularly that these great, rich, and powerful culprits would prevail — would escape the measures of the law and the punishment of their crimes; that their palaces, built with the moneys drawn from the sweat and toil of our honest, industrious, hard-working citizens, would continue to rise like exhalations and shame public morality and public honor.

Fellow-citizens, I say to you to-night as I said on the 4th of November, 1871, — now nearly four years ago, when I took a share in the great contest in New York city, — in your cause I will "follow where any shall dare to lead, or lead where any shall dare to follow!" The cause will not fail; whoever shall venture to stand against it will fall to rise no more. I have no apprehensions that the law will fail of its efficacy; but I will speak a word of encouragement to those who are less hopeful. You can send, if needful, to the legislative bodies men who will make new and better laws to punish these wrongs and to bring these wrong-doers to justice; and the people, by the exercise of their sovereign authority, may, if need be, in convention assembled, redress all defects and failures of public justice. If our legislative bodies and public officers fall short of their duty, the people can recall the powers they have delegated, can renovate the administration of justice, until those eyes, represented in Roman statuary as blind, shall be made to see substantial right and genuine law.

Fellow-citizens, I know you do not expect me to address this vast audience beyond a reasonable exertion of my voice. I will therefore refer you to what I said on a late occasion before the Buffalo Board of Trade. Every word said there I repeat to you to-night. I assure you that, so far as the administration of the law is concerned, nothing shall be spared to protect and enforce your rights with impartial justice. I say this in no spirit of vengeance, "with malice toward none, with charity for all;" but, with a firm devotion to the rights and interests of the people, the work of reform must and shall go forward.

XLII.

On the 12th of August Governor Tilden arrived at Utica. During the evening he was serenaded, and presented to the citizens of Utica, who had assembled in large numbers to greet him, by the Honorable Francis Kernan, a resident of Utica, and then a member of the United States Senate. Mr. Kernan, in introducing the Governor, said he desired to unite with his fellow-citizens in commending the firm, energetic, and untiring exertions of the Governor to inaugurate reform and to bring back the administration of the State government to honesty and economy in every department. Governor Tilden replied as follows.

VACATION SPEECH — UTICA.

Citizens of Utica, — I feel to-night like a Grecian in the age of Demosthenes speaking to the Athenians. I shall address a few plain words to an audience educated by the statesmanlike thoughts of Horatio Seymour and the fervid eloquence of Francis Kernan. I am glad to meet you — glad not so much on my own account as for the cause that excites so deep an interest in the hearts of this great gathering. The State of New York, first in the sisterhood of American commonwealths, embraces within her borders the commercial emporium of the Union, and comprises five millions of the most active population on the face of the globe, representing every variety of the industries. I have had occasion recently to present to my fellow-citizens some observations in respect to the means of harmonizing the views of those interested in the navigation of the canals, in the improvement of the public works, and in the removal of the burdens of the taxpayers of the rural districts. Looking a little farther beyond the borders of our own State, it is impossible for us to maintain the policy most fitting for ourselves, and not shower its benefits upon our sister States. An older commonwealth, as we are, we renew and live over our youth again in the great, rising, active communities of the Northwest, — Illinois, Wisconsin, Iowa, and Missouri; and I am rejoiced that it is impossible for us to protect and develop our own interest in respect to the great systems of intercommunication which traverse our State without conferring like benefits on these great Western communities.

Gentlemen, in some remarks I had occasion to address to the Board of Trade of the city of Buffalo the other day, I adverted to the fact of the remission of taxation which we had accomplished in this State. I refer to the subject to-night because the telegraphic report — wonderfully accurate in the main — stated the reduction of taxes to have been only $2,250,000, whereas it is over $2,700,000. I desire to correct this error, and make known how much has been accomplished in this respect.

A product of the increased valuation will be brought into the treasury unknown and unexpected at the time the tax-bills were enacted. The valuation is something like $200,000,000 larger this year than last, which will bring it to about $1,200,000,000. That money will be a surplus in the treasury at the end of the year. Even deducting that amount, our remission of taxes would be $1,500,000. But the appropriations have been reduced to such an extent that there will be a further surplus beyond that increase of revenue; and we shall be able, if honest men are sent to the legislative bodies who will co-operate in the work of reform and carry on the business of this State economically, to reduce the taxes from 6 mills, which they are now, to 4½, and perhaps to 4 mills. They were last year 7¼ mills. This year we have reduced them to 6; next year we can reduce them to 4½ or 4. And we can continue still further to reduce them to 2 or 2½ mills, until they are as low as they were before the late civil war.

Fellow-citizens, this is a matter of interest to you all. I ask you to give your attention to the choice of the men who are to represent you. Last year you had to elect an Assembly only; this year you are to renew the whole Senate, the whole Assembly, and the whole Canal Board, — all the Legislature and the principal administrative bodies of the State. You have, therefore, at the coming election the power to work a revolution in the administration of the canals. Partial changes are of no utility. A new man of good intentions and ordinary force of character engrafted upon the existing body of officials will

accomplish nothing. What you want is a renovation of the whole system.

Gentlemen, I am not of those who accept men who seek shelter under the Democratic flag while they betray the rights and interests of the people. I am in favor now, as in 1871, of shooting as a deserter any man calling himself a Democrat who plunders the people; and I hope our Republican fellow-citizens will do the same. In elevating one party we necessarily elevate the other. I desire particularly to call the attention of the farmers of this great agricultural county, situated in the centre of the State, surrounded by other agricultural counties, to the interest they have in carrying out these great reforms. The taxes which are paid to the Federal Government are collected indirectly, and but little felt by the people. In the cities municipal taxation is the largest burden; but in the agricultural counties it is the State tax which constitutes the chief visible burden. And I call on the farmers to consider the peculiar and extraordinary degree of their interest in the reduction of State taxes.

Fellow-citizens, it is not that we withhold anything that is necessary for the public good; not that we will withdraw our aid from those great social objects with which the government usually concerns itself: but it is that we stretch out our hands and crush the spoilers of the public treasury. It has been said that the commission appointed to investigate the canal frauds have been slow. They have undoubtedly taken considerable time to carry on their investigations. But let me say to-night that they have collected a body of evidence of great accuracy and completeness that will enable the suits to proceed with rapidity and vigor. Indeed, the cases are already half tried by the labors of that commission; and it will be discovered ere long that the fruits of their work will amply answer the expectations of the people.

Gentlemen, I am on a journey from Buffalo to Albany, and have stopped over night to see some friends, and am happy to meet the citizens of this place, — those who feel an interest in

good government and pure administration; and I hope that every man within the sound of my voice will bear in mind and carry with him to his home a sense of how much depends upon the part he shall act in this great work. It is not enough for you to select men who make fair professions; you are to look to what they have done hitherto. If you find them reformers who see some objection to every measure of reform and no danger or evil in plunder or fraud, but great mischief in everything intended to repress them, let these men stay at home. Let them watch in silence their own household gods, and send to the legislative bodies men who have at heart the cause of the people. Fellow-citizens, it is not to ourselves alone that we are to look when we consider what is involved in this controversy. The whole United States, and indeed other countries, are interested in it. The cause of free government has been dishonored and imperilled by the abuse, maladministration, and peculations that have recently prevailed in this country.

Whenever among the countries of the Old World men are aspiring to a larger measure of liberty and a larger share in the conduct of government, they are met by the disparagement of the free institutions of America. By the most sacred obligations, by the highest of human duties, all citizens of whatever party are bound to unite to contribute what they may to the purpose of redeeming the reputation and securing the successful working of the free institutions in this great commonwealth. Citizens, shall we have your co-operation in this great cause? Are you ready, in the coming canvass, to whatever party you may be attached, to insist that these great objects shall be paramount? You have only to will it, and the cause will go forward and onward to complete success.

XLIII.

The Central New York Annual Fair in 1875 was held at Utica; Governor Tilden accepted an invitation to visit it on the 30th of September. The report that he was to be there drew a large crowd, estimated by the contemporary Press at "fully twenty-five thousand persons." At 2 P. M. the Governor, accompanied by ex-Governor Seymour and Senator Kernan, both of Utica, was escorted to the fair-grounds by Young's Independent Cavalry corps and the Adjutant Bacon Cadets. He was then formally presented to the assembled multitude by Mr. Thomas R. Proctor, the president of the Association, who spoke of the presence of the chief magistrate of the commonwealth as a just recognition of the important public interests in part represented by their Association. He added: "Agriculture, horticulture, and mechanics, while they are the primary sources of the prosperity of other pursuits, are eminently self-sustaining. Their greatest foe, however, is taxation, direct and indirect, when made oppressive by official peculation and corruption. We now greet you, sir, because we are naturally in full sympathy and accord with your patriotic, well-directed, and fearless efforts to relieve the people of this State, and more especially the labor which is expended on the products of the soil, from ruinous taxation. We venture to congratulate you on your success thus far, and to encourage you with an assurance of our hearty co-operation in that laudable work." When the applause which followed these remarks had subsided, Governor Tilden made the following brief address.

VACATION SPEECH — CENTRAL NEW YORK FAIR.

Mr. Proctor, Gentlemen of the Fair, and Citizens of Central New York, — I felicitate myself that I have to-day an opportunity to witness the magnificent display of your industries, and what is more magnificent, this mass of farmers and citizens. New York, of all the States of the Union, in its agriculture embraces the largest number of farmers, has more invested in its farms and agricultural implements, and yields every year a larger product for its agricultural industries, than any of the other American commonwealths. True it is that New York is transcendent in its commerce, and exceeds in its manufactures and mechanical industries all the other States of the American Union; but with these great achievements in the arts, it still maintains its front rank in the agriculture of the United States.

I know that in addressing you, fellow-citizens and farmers, I have to encounter a dangerous rivalry. Here among you is the illustrious dairyman of Deerfield, farmer Horatio Seymour; and I have to compete with the ornate oratory of Roscoe Conkling and with the fervid eloquence of Francis Kernan, two famous husbandmen of Utica: but I venture to put forward my little claim also to be heard among the farmers of my native State, where, if I have not done much myself in the agricultural line, at least I can claim a long line of ancestors who have been devoted to the tillage of the soil.

Two hundred and forty years ago one of my ancestors, whose name I bear, came to this country. At that time a man was not allowed to emigrate unless he was certified to by the

public authorities; and they certified my ancestor as a "yeoman," — one of those yeomen of Saxon and Kentish England who preserved their free customs and ancient and immemorial liberties during all the feudal ages. I therefore present my patent of nobility as a descendant from a yeoman whose race for many centuries had never submitted to arbitrary power.

Fellow-citizens, as I grew up I lived among farmers, not in a city like Utica, not in a village, but in a hamlet where almost every man I met was a tiller of the soil. I believe that I learned to understand their temper, their character, and their interests; and ever since through life I have been mindful of them in the humble part I have taken in the conduct of public affairs. And I consider myself invited to-day, by the remarks made by the President of your Society, to say to you a few words in regard to the interests of the farmers of the State of New York. In the present condition of our public affairs I have no word of a partisan character to utter. I have nothing to say to you that any American citizen should not say to every other American citizen, to whatever political party he may belong, or whatever his political opinions may be. My proposition, then, gentlemen, is this, — that the farmer, more, perhaps, than any other class, is interested in the question of taxation, which has been adverted to by the President of your Association. His gains come slowly and with difficulty. No fortunate speculations, no turn of the markets, no exercise of his wits fills his little treasury. It is toil — honest, patient, industrious toil — to which alone he can look for the surplus which at the end of the year enables him to fill his little store and to meet the constantly recurring demands of the tax-gatherer. I say, therefore, that he, more than any other citizen of the community, is interested in this question.

State taxation.

Now, my fellow-citizens, what are the facts in respect to this matter? Our forefathers fought that they might establish on this continent an association of equal American citizens, who should be able to conduct their public affairs simply, by a government attending to a few com-

mon objects, — preserving and maintaining justice, protecting the citizen, and leaving the mass of his earnings in his pocket, to be disbursed according to his tastes and according to his desires. They fled to this country from the oppressions and burdens of European government, and established a free commonwealth in the hope that through all the future their institutions might be preserved, at small cost, with justice and frugality. Now, my fellow-citizens, if you look at the census of 1870 you will find that the taxes of that year were fivefold what they were in 1860. It was five years after the close of the war; and yet the taxes were not reduced to the former amount, and to-day they are very little reduced. Now I am not going to undertake to say here whose fault this is. I suppose that in some degree it is everybody's fault; it will be your fault if you do not correct it. Fellow-citizens, I had occasion at the beginning of the legislative session last winter to state to the legislative bodies and to you that the taxes for the last ten years following the war had been $7,000,000,000, or $700,000,000 a year on an average for ten years. Now I submit to you whether this is not too large a portion of all you can earn, to be appropriated for such a purpose.

Think of it! Your national debt is but the amount of three years' taxation. Think of it! You have built in the last forty years seventy-six thousand miles of railway. The nominal amount of their stocks and bonds may be something near $4,000,000,000, and the actual cost about $2,500,000,000. Fellow-citizens, the whole of this vast sum expended for these purposes is less than three and a half years of your taxes. Try another illustration. You are very justly proud that you are the greatest gold and silver producing nation in the world. You boast that on your broad areas of fertile soils you raise cereals to send abroad to eke out the supply necessary to feed the population of the Old World. You send forward your grain from every part of the United States. You send meats; you send wheat and corn and cheese; you send other products of the farm; you send vast quantities

of petroleum. And then you have one crop, the mass of which is exported, the largest that any nation in the world ever contributes to the exchanges of mankind, — I mean the cotton crop, which yields from $200,000,000 to $280,000,000 a year foreign exports. Now what is the result? When you have sent forward your gold and silver, your petroleum, your wheat, and your corn, your cheese, your butter and meat and cotton and products of every kind, — when you have raked and scraped this continent from the Lakes to the Gulf, and from the Atlantic to the remote interior, — what have you done?

The result.

When you have gathered together all these products and paid the cost of carrying them to the seaboard, — a cost often larger than the original cost of raising the products, — with every exportable commodity carried to the Atlantic seaboard and deposited in the vessels of foreigners, you have paid ten months of one year's taxes. I use these illustrations to present, in as clear a manner as possible, the nature of this burdensome system to which you have submitted. In a speech which I made seven years ago I depicted this condition of things, and said that while you could pay what you did during the swelling of values out of the froth of apparent and illusory wealth, when prices should settle to their ordinary condition, — as they are sure to do, — then it would take not merely your earnings and your income, but would trench upon your capital itself to pay such taxation. And now, gentlemen, while at that time it was difficult to get an audience or find ears willing to listen, that change has come, — it is upon you. No human contrivance or act of government can prevent or stay the reaction that results from fictitious values. When prices recede, then there settles around us, like a dark cloud, this weight of taxation which you should have foreseen and averted years ago.

Elect honest men.

Fellow-citizens, I appeal to you, without reference to your party character or party affiliations, to join in the demand for the retrenching and redressing of these evils. If you are Republicans, see to it that no Re-

publican goes to the legislative halls except he represent you faithfully on this subject. If you are Democrats, see that no man goes to represent you in the legislative bodies who will not do his entire duty to the labor and industry of the country. In this respect you have but to will it, and the farmers — though they have ceased to govern the State of New York as completely as they did thirty or forty years ago, when they formed two thirds or three fourths of the whole mass of voters — to-day exercise such a vast power that they can control the result; and they are interested in a peculiar degree in State taxation. In the city of Utica, in all the cities of the State, the heaviest burden of taxation is from municipal taxes; but in the rural districts the State taxes are about half, and the town and county taxes the other half, of what the farmer has to pay.

The farmer's power to control taxes.

It is in your power to control the town and county taxes; and you have only to send men to Albany who will faithfully represent you, to control also the State taxes. We began this work last winter. It made great conflict and turmoil, the attempt to remove the fungus-growths which had sprung up all over and all around our State institutions, and which were smothering their vitality. We have reduced already your taxes from seven and a quarter mills to six mills for the present year; and if you will send to Albany next winter men who will join in this object, you can reduce them to four mills. I invoke the attention of the farmer to this interesting subject. It is not alone the saving of dollars and cents, but you cannot preserve your present system of government unless you purify administration and purify legislation.

The evils of corrupt government are not confined to the taking of money from the people to enrich those who are not entitled to its enjoyment, but the growth of such a system saps all public virtue and all public morality; and at last "a government of the people, by the people, and for the people" will cease to exist, as other republics in ancient times have perished from general demoralization and corruption.

XLIV.

On the 7th of December, 1875, the Hebrew Charity Fair in aid of the Mount Sinai Hospital was held at Gilmore's Garden. At eight o'clock Governor Tilden, accompanied by Andrew H. Green and Emanuel B. Hart, entered and took his seat on the platform, surrounded by the leading members of the Jewish community. After the enthusiastic applause which greeted the appearance of Governor Tilden had subsided, and after a few introductory remarks by Mr. Hart, Governor Tilden came forward and spoke as follows.

VACATION SPEECH — HEBREW CHARITIES.

Ladies and Gentlemen, — It gives me great pleasure to commend the noble charity which you are assembled to promote, not only to that great class by which it has been organized, but to the whole public. The unwritten obligations of the official trust which I have held from the people of the State of New York during the last year have added so largely to its routine duties as to leave me little opportunity for occasions like the present; and when your committee did me the honor to invite me to come here to-night to open your proceedings, I dared hardly hope that it would be in my power to avail myself of their courtesy. It is now two hundred and twenty years since the first little colony of your race and religion planted itself in the city of New York; and although its growth for a long time was slow, latterly the increase has been so great that to-day I am credibly informed it comprises about seventy thousand of the people of the city of New York. It is not in numbers only, it is not for industry and thrift merely, that this class is distinguished; but it is conspicuous in all those pursuits that form the strength and the glory of a commercial metropolis. They are useful citizens, generally setting examples of domestic and social morality. They are distinguished for their respect for parents, for their education of their children, for their fidelity to all moral obligations, and for their personal virtues; and they to-day in New York repay this great commonwealth for the fostering care and equal privileges which from the earliest times it has freely extended to them. This race and creed, which have been persecuted

in every clime and in every age, first found equality before the law in America. This great State of New York to-day comprises almost five millions of population; and from its first independent existence, indeed far back in its colonial period, it extended to you all the rights of American citizenship. How much, ladies and gentlemen, this is, you will see when you reflect for a moment that it is within our own day that the first man of this race and creed was admitted into the municipal councils of London; and it is only a few years since the first man of this race and creed was allowed to take a seat in the Parliament of Great Britain. Fortunate is this State, with some few exceptions the other States of the Union, and our Federal Government, in being foremost in admitting to full equality your kinsmen. While you bear your burdens, your share of all the public charities that are carried on by taxation, you contribute very little to those burdens; you care for your own poor and your own unfortunates to a degree that I think is equalled by no other class of citizens. It is for this reason that this charity commends itself to the sympathy, to the confidence, to the encouragement and support of the whole people. I am informed, also, that in terms this institution is not confined to any nationality or any creed, but that its beneficent care is freely tendered to all poor and unfortunate, and that at least 20 per cent of your benefactions are to races and creeds different from your own. I trust, ladies and gentlemen, your fair will transcend in its success your expectations and your hopes.

XLV.

The second Annual Message of Governor Tilden was submitted to the Legislature on the 4th of January, 1876. It was at a moment of profound business depression, which had endured already for three consecutive years with no prospect of relief. Wages continued falling, incomes and property were shrinking, and chilling distrust seemed to have arrested the circulation of the nation's wealth. To explain this state of things, to trace its cause and suggest the remedies, was the special and distinguishing feature of this Message. Though applied to a temporary situation, the doctrines here expounded belong to the ripest science of political economy.

SECOND ANNUAL MESSAGE.

EXECUTIVE CHAMBER, ALBANY, Jan. 4, 1876.

To the Legislature.

THE annual meeting of the legislative assemblies at the beginning of the new year finds the people of this commonwealth in the enjoyment of blessings which ought to fill us with reverent thankfulness to Him from whom cometh every good and perfect gift. Whatever the earth could yield to the labor of man under the fructifying and genial forces of nature we have garnered. Health, peace, and domestic tranquillity have been ours. Capacities to produce in largest abundance and with least sacrifice, or to acquire by exchange through the best natural and artificial machinery of transport and travel, all things which minister to material well-being, to the prosperity and wealth of a State, and to the comfort and felicity of its individual members, have been and are subject to our use.

It was early discovered that New York possessed within her territory the natural passes of military operations which, in the wars for colonial existence and for national independence, cross-tracked our soil with fire and blood. Our territory was also found, on the later development of the national growth, to occupy the natural thoroughfares of travel and traffic. It touches the ocean with a harbor ever open, accessible, and safe, close by whose gates the ocean currents compel to pass nearly all transatlantic navigation to and from this country. It con-

nects that harbor and the tranquil Hudson, on the north with Lake Champlain and the Canadas, and on the west by a level crossing the bases of the mountain ranges that traverse the continent, with Lake Erie and its chain of great inland seas, bordered by rising commonwealths which are the marvels of modern times.

We are, with our fellow-citizens of the other States, joint inheritors of a system of government, the selected product of the oldest existing civilization, formed according to the best ideals evolved from human experience, but freed from the overgrowth of habits and interests elsewhere incident to such experience, and planted in the virgin soil of an unoccupied continent, abounding in all the gifts of nature. Our population, by the census just taken, is nearly four and three quarter millions. Our annual product of agriculture is still greater than that of any of our young rivals, whom we contemplate with admiring pride as in part the creations of our policy and the swarming homes of our own children. Our domestic manufactures are larger than those of any other State. Our foreign commerce is once and a half that of all the rest of the Union.

Common schools, in which are taught a million of youths, and seminaries of higher learning, are training our successors to improve on whatever they can inherit from the present generation. Institutions of charity dispense everywhere their benefactions; and the surface of our whole domain is dotted thickly by edifices whose spires point to heaven.

If on this fair picture there are spots that indicate a recent prevalence of private waste or folly, or that disclose evils or wrongs by government, resulting in much temporary distress, let us remember with humility that we have been in part the authors of what we deplore, or at least consenting witnesses; and let us be grateful that we can reform what is amiss, and that to our hands, under God, is committed our own future.

The nominal amount of the debts of the State, as they appear

Debts of the State.

on the books of the Comptroller, without deducting the sinking funds applicable to their payment, on the 30th of September, 1875, the close of the last fiscal year, was $28,328,686.40, classified as follows: —

General Fund	$3,119,526.40
Contingent	68,000.00
Canal	10,086,660.00
Bounty	15,054,500.00
	$28,328,686.40

The sinking funds.

The amount of those debts on the 30th of September, 1875, after deducting the assets in the sinking funds at that time applicable to their payment, is exhibited by the following statement, furnished by the Comptroller:

	Debt, Sept. 30, 1875.	Sinking Fund, Sept. 30, 1875.	Balance.
General Fund	$3,119,526.40	$3,029,605.70	$89,920.70
Contingent	68,000.00	36,677.64	31,322.36
Canal	10,086,660.00	1,448,345.51	8,638,314.49
Bounty	15,054,500.00	*9,066,753.29	5,987,746.71
Totals	$28,328,686.40	$13,581,382.14	$14,747,304.26

The actual reduction during the year of the debts by cancellation of matured stocks and by the purchase of $858,000 of the bounty loan for the sinking fund is $1,870,770. The diminution during the year of the debt, after deducting the assets of the sinking fund, is $2,744,505.06.

The Bounty Debt.

But even this exhibit does not completely show the situation of the sinking funds as we are to deal with them in the legislation of your present session. The appropriations made at the last session became operative on the 1st of October, 1875. The taxes levied for the fiscal year beginning on that day are in process of collection.

The appropriation for the Bounty Debt Sinking Fund was $4,260,000. If that sum be deducted from the balance of

* Deducting interest accrued to Oct. 1, 1875, payable Jan. 1, 1876.

$5,987,746.71, as shown in the table for the 30th of September, 1875, there would remain but $1,727,746.71 to be provided for by your legislation.

The near approach of the extinction of the Bounty Debt suggests a retrospect. If it had been a necessary condition to a restored union, our people would not count its cost. But it was essentially an after-war adjustment; and if the criticism of the Comptroller in his Report of 1875 be just, that though created "nominally to pay bounties to the volunteer soldiers who enlisted in the service of the United States during the rebellion, but only an inconsiderable part of this sum is believed to have reached the soldiers who were actually engaged in the contest," the experience would be chiefly useful in illustrating the magnificent costliness of improvident debt. The appropriation for it in the last ten years amounts to $39,983,862.97, and interest would swell the present cost to at least $50,000,000. When the appropriation of the present year shall be added, the people of this State may be congratulated on its extinction.

Canal debt.

The appropriation at the last session for that portion of the canal debt known as the floating canal debt was $266,000, which will complete its payment and leave a small surplus in the sinking fund. On the other hand, the sinking fund for the canal debt proper will fail to derive from the revenues of the canals the whole amount of the instalment required; and a deficiency of $625,610.70 will have to be supplied.

Whole amount of debts.

The application of the sums appropriated from taxes now in process of collection would reduce the State debts to about ten and one quarter millions of dollars, exclusive of accruing interest. Another observation ought to be made in respect to the sinking funds. Nearly twelve hundred thousand dollars of the assets consist of premiums on its stocks at cost or at present market rates. It is clear that the operations of the sinking funds should be revised. The best investment, certainly the safest, for a State as for an individual is in the payment of its own debts, if that be

possible on reasonable terms. Individuals seldom find easy credit anything but a snare; States never. A large mass of cash on hand, even if in sinking funds, tempts to improvident expenditure and to illegitimate use.

Constitutional restrictions on public debts.

Thirty years ago, in June, the Convention sat which formed our present Constitution. It was called into being chiefly to impose restraints on the power of the Government of this State to contract debts. The purpose of the people to establish these guards against their agents was the result of years of animated discussion. The restraints were carefully devised. They have been useful, and, in the main, effectual. In 1846 our State debts were nearly twenty-four millions. In 1876 they will be reduced to ten and a quarter millions.

The Convention considered plans for applying such restrictions to all municipal bodies and local governing officials. They did not feel able, in the period of their session, to mature satisfactory provisions. They devolved the duty on the Legislature, commanding its performance. Their injunction has been unexecuted; and in 1876 the city of New York has a debt of one hundred and twenty-two millions, after deducting its sinking funds, against a debt of less than fourteen millions in 1846. The other cities of the State owe sixty millions, and many counties and towns are also largely burdened.

Sole surviving member of the committee which prepared the constitutional restrictions on the creation of State debts, I might be permitted, in honor of the illustrious dead, to trace the moral our experience has since proved of the utility of their work; but I have recounted the results to show that the policy was then, and is now, absolutely necessary to the safety of the people in all State and local governments.

Taxes for State purposes in 1874 and 1875.

The taxes levied by the Legislature of 1874 were 7¼ mills on a valuation of $2,169,307,873. Their produce, when all realized, is $15,727,482.08. The taxes levied by the Legislature of 1875 were 6 mills. They were computed in the Comptroller's office and in the Legislative

committees on the valuation of the previous year. On that basis their produce would have been $13,015,847.24.

The reduction would have been $2,711,634.84. But the valuation was increased to $2,367,780,102. The produce of a 6 mills tax on that amount is $14,206,680.61. The increase of the valuation gives an excess over the estimated amount of $1,190,833.37. The reduction actually effected is $1,520,801.47.

The reduction.

A reduction of taxes, without reduction in appropriations, would but create a deficiency and a floating debt. These would have to be paid by a subsequent increase of taxes. The appropriation bills were framed to correspond with the lower valuation, and much effort was made to keep down the appropriations. The result is shown in the following table: —

Appropriations of 1875.

APPROPRIATIONS AND TAXES OF 1875 COMPARED.

	Mills.	Appropriations of 1875.	Tax computed on valuation of 1874.	Tax computed on valuation of 1875.	Excess.
Schools	1¼	$2,712,000.00	$2,711,634.84	$2,959,725.13	$248,090.29
Bounty Debt .	2	4,260,000.00	4,338,615.75	4,735,560.20	396,944.45
Capitol	½	1,000,000.00	1,084,653.94	1,183,890.05	99,236.11
Canal Floating Debt	⅛	266,000.00	271,163.48	295,972.51	24,809.03
Canal awards	⅕	422,766.90	433,861.57	473,556.02	39,694.45
General purposes	1⅜	2,986,825.00	2,982,798.33	3,255,697.64	272,899.31
Deficiency and asylums . . .	11/20	1,525,213.53	1,193,119.33	1,302,279.06	109,159.73
		$13,172,805.43	$13,015,847.24	$14,206,680.61	$1,190,833.37

Excess of appropriations over tax, computed on valuation of 1874 .	$156,958.19
Excess of tax, computed on valuation of 1875, over tax computed on valuation of 1874	1,190,833.37
Excess of tax, computed on valuation of 1875, over appropriations of 1875	1,033,875.18

The reduction in the appropriations of 1875 below the taxes of 1874 — counting, at its true construction, one item about which there may be some doubt — is $2,554,677.65. This

leaves the sum of $1,033,875.18 applicable to the reduction of taxes for the coming fiscal year.

Reduction of appropriations from canal revenues or funds.

The appropriations for ordinary expenses and repairs of the canals made at the last session for the fiscal year beginning Oct. 1, 1875, were, $1,109,150, and for the current fiscal year a special contingent provision of $150,000, making $1,259,150. The like appropriations made at the session of 1874 were $1,424,510, and a provision for the then current year for deficiencies of $250,000. The reduction in 1875, as compared with 1874, is $415,360. The Canal Reappropriation Bill in 1874 reappropriated $917,319.63; that of 1875 reappropriated $340,079.19. The diminution is $577,240.44. The amount raised by former taxes reclaimed into the treasury by striking out items in the Reappropriation Bill of 1875 is $67,765.69.

The objects in respect to which a reduction of taxes was effected were, —

	1874.	1875.	Reduction.
Extraordinary canal repairs . .	$1,898,144.39	None.	$1,898,144.39
Asylums and reformatory . . .	813,490.45	$479,800.00	333,690.45
General purposes	4,189,475.84	3,696,117.66	493,358.18
			$2,725,193.02

1. In respect to the first item, the Memorandum assigning reasons for withholding the Executive sanction from the Bill making appropriations for extraordinary repairs to the canals contains the following observations: —

"The budget for extraordinary repairs, as originally prepared, proposed an expenditure of $1,400,000. In the ordinary course of things, the additions which would have been made to it during its passage through the two Houses by the friends of local objects able to influence those bodies would probably have swollen it to as great a magnitude as the Bill of last year for the same purpose, which amounted in tax to nearly $1,900,000.

"It was in this condition of things, when the routine, which had become so firmly established, was likely to bring for my action bills which could not be totally rejected, and perhaps could not be effectually altered, and which would practically continue the existing systems of canal expenditure, against which I had

objected in my Annual Message, and invoked retrenchment and reform, that I felt it my duty to enter upon the investigation which resulted in the Special Message of March 19, 1875.

"The discussion which ensued, generated a spirit in the legislative bodies and among the people that triumphed over and broke up the routine, hitherto dominating, and which, like an enchanted ship, moving onward in its course without a crew, was drifting us into a repetition of all improvidences, abuses, and frauds so long infesting this department of the public administration.

"The results of this discussion will be found in a reduction of the appropriations for the expenses of collection, superintendence, and ordinary repairs, and in the extinction of expenditures for extraordinary repairs."

2. The reduction in the second item was the result of a policy adopted by the finance committees of the two Houses, with my concurrence, of confining the appropriations to such sums as would make available and bring into use the portions most nearly approaching completion of the asylums and reformatory, now in the course of construction. The appropriations allowed to pass, conform, in the main, to that plan.

3. The Memorandum assigning reasons for withholding the Executive sanction from certain items of the Supply Bill expressed the belief that "with the reductions made in the legislative bodies, and by the refusal of the Executive sanction to items and bills passed by the Legislature, the expenditures and appropriations ought not to exceed the taxes levied; and the reduction of taxes will be a clear saving to the people." It added that "the failure of sundry items and bills to receive the Executive sanction will reduce the appropriations as follows." And it enumerates such items to be paid by taxes amounting to $332,169; and items struck out which reclaim cash to the treasury, $67,765, — making a total of $399,934; besides items to be paid out of canal revenue to the amount of $365,946.

The failure to keep the appropriations down to the taxes levied on former occasions has led to deficiencies in the treasury and floating debts which are forbidden by the Consti-

tution, and to violations of the sinking funds. We cannot too vigilantly guard against a recurrence of these evils, or insist too inflexibly that no appropriation shall be made until the means of paying it shall have been provided.

Reduction of State taxes for 1876 to one half the taxes of 1874.

The taxes for State purposes in 1874 were $7\frac{1}{4}$ mills on a valuation of $2,169,307,873, producing $15,727,482.08. The taxes for State purposes in 1876, if reduced to $3\frac{625}{1000}$ mills on the valuation of 1874, or $3\frac{321}{1000}$ mills on the valuation of 1875, which is $2,367,780,102, would yield $7,863,741.04.

After a careful consideration of the elements of the question, I have arrived at the conclusion that a reduction, substantially of this extent, can be effected without detriment to the public interests if there exist no deficiencies yet undiscovered in the public accounts, and if no extraordinary necessity for new appropriations shall arise.

It may be proper to indicate some of the chief particulars in which this reduction can be made.

1. Payment on debts of the State.

	Appropriations in 1874.	Necessary in 1876.
For Bounty Debt	$4,260,000.00	$1,727,746.00
For Canal Debt	198,888.00	625,610.70
	$4,458,888.00	$2,353,356.70
Reduction		2,105,531.30

2. Canal expenditures.

	1874.	1876.	
For extraordinary repairs	$1,898,144.39	None.	
For awards . . .	474,536.10	$172,680.49	
	$2,372,680.49		
Reduction which, as to canal awards, is estimated			2,200,000.00
3. Reduction by means of surplus of taxes in 1875			1,033,875.18
Carried forward			$5,339,406.48

Brought forward		$5,339,406.48
4. The taxes provided for general purposes in 1875 were less than those of 1874 by	$493,358.18	
The excess of appropriations over taxes, computed on the old valuation, was	156,958.19	
Balance	$336,399.99	
Counting on the same appropriations this year, there will be a reduction of		336,399.99
5. The tax for new asylums and reformatory in 1874 was . . .	813,490.45	
The appropriation for 1875 was .	479,800.00	
Balance	$333,690.45	
If the same appropriations were made in 1876 as in 1874, the reduction would be		333,690.45
The reductions effected in these items would be . .		$6,009,496.92
In order to effect the diminution of taxes one half, there would remain to be effected out of the other appropriations a further reduction of		1,854,244.12
The other taxes in 1875, as appropriated, were, —		
For new capitol		1,000,000.00
For asylums and reformatory		479,800.00
Remainder of taxes appropriated for general purposes, 1874		3,696,117.66
Taxes appropriated for schools, 1874		2,660,000.00
Total		$7,835,917.66
A quarter of that would be		1,958,979.41
The balance of the reduction proposed is		1,854,244.12

Three quarters of the reduction contemplated will have been effected out of half the taxes in the items mentioned. There would seem to be no difficulty out of the remaining half of the taxes to make the remaining quarter of the proposed reduction. The subject will be further discussed when the principal objects of the expenditures are separately considered.

It is not intended to insist on positive exactness of results. In the exigencies of a great State, unforeseen necessities may arise. But in private business, and in the administration of those great corporate bodies which are the growth of modern times, and some of which receive and disburse larger sums than the treasury of the State, it is found to be wise and even necessary to work up to a systematic plan. The State ought to do the same. It is one of the evils of unsystematic legislation and administration that results are never certain, — that expenditures exceed appropriations, and appropriations exceed taxes. A floating debt is thus created by some subordinate officer or authority, which the Constitution expressly prohibits the law-making powers of the Government from creating, except to the extent of a million dollars. But there seems to be no reason to doubt that, on the scale of our present population and our present policy, the remission of taxes may be permanent.

The permanent result.

In 1877 the million and three quarters required this year for the bounty debt will be unnecessary. It is possible, if the canals are well managed, that the demand from them on the treasury may be somewhat reduced. The State prisons, the quarantine, and the salt works all afford scope for retrenchments; they now share the fate of all other business and speculations which the State undertakes. A decay of income and a growth of expenditures indicate the incompetence of the State, in its sleepy indifference, to compete with the ever vigilant and earnest activity of private interests. The deficiency in the State prisons for the year is nearly $550,000, and of the quarantine about $62,000, making $612,000. This sum and the last instalment of the Bounty Debt, amounting to a million and three quarters, which is a charge on this year, and the deficiency in the canal sinking fund, amount in the aggregate to $2,960,000.

The result, expressed in round numbers, is, that after you have reduced the taxes for State purposes from sixteen millions to eight millions, three of the eight millions remaining are or

ought to be for exceptional expenditures. That amount, therefore, ought to form a fund adequate, after this year, to meet the exceptional expenditures of the State for improving the main trunks of the canals and finishing all public buildings that ought to be finished, and for an ultimate further remission of taxes.

I have made this explicit exposition of the subject, at the opening of your session, in order that in all the formative stages of legislation involving expenditures, appropriations, and taxation, the considerations suggested may be present to your minds. The amendment to the Constitution, first brought into operation at the last session, imposing on the Governor the obligation to revise every item of appropriation, works a change in official practice amounting to a revolution. Hitherto, as the appropriations were embraced in bills that had to be accepted or rejected as a whole, the items have been, in effect, withdrawn from the action of the Governor. The responsibility now devolved on him is very laborious and difficult. It tends, perhaps, to work some change in the customary relations of the departments. In ordinary legislation it is stretching the function of the Executive veto too far to apply it to every case in which the Governor, if a member of the Senate or Assembly, would vote against a Bill. There seems to be a disposition to hold the Executive to the extreme of accountability in respect to appropriations. This tendency may be carried so far as to disturb the constitutional equilibrium of the executive and legislative forces. Not desiring to amplify my official powers, nor disposed to shrink from any just responsibility, the occasion seems fit to invite a frank understanding, to avow my own wish for, and to seek from you a cordial co-operation on this subject for the good of our common constituents. I have endeavored to narrate the financial condition, prospects, and possibilities of the State in plain language, divested of the technical forms of complicated accounts, which render financial statements capable of being analyzed only by experts, and incapable of being

understood by anybody, without explanations which they do not contain.

Policy of the State as to the Erie Canal.

In my Annual Message of last year I entered into a full discussion of the policy of the State in respect to the construction, ownership, management, and improvement of the Erie Canal.

In my Special Message of March 19, 1875, I opened a discussion as to the improvidence, waste, and corruption which have infested the administration of the canal system. Inviting your attention to those documents, I confine myself on this occasion to a brief summary of the policy of the State as it may be deemed now to be settled.

1. Not denying the general unfitness of Government to construct, own, or manage the works which offer the means of transportation, the State of New York saw an exception in the situation and in the nature of the canals which are trunk connections between the Hudson River and the great inland seas on the north and west. Connecting vast navigable public waters, they assume something of a public character. They are a link of 350 miles in a system which, on the one hand by 1,500 miles of the waters of the Great Lakes, and on the other hand by 3,150 miles of the waters of the Hudson River and the Atlantic Ocean, connects the crowded populations of Europe with the fertile prairies of the Northwest, covered with their network of tributary railways.

2. The Erie Canal remains an important and valuable instrument of transport, not only by its direct uses, but by its regulating power in competition with the trunk railways between the East and the West.

3. The Erie Canal has a capacity to accommodate an aggregate tonnage at least twice as large as has ever offered. It is capable of being made an instrument of the cheapest transportation per ton per mile which artificial navigation, in existing geographical and physical conditions, can attain, — not by changing its essential character, but by perfecting it and giving it the highest efficiency.

4. The policy upon which the State appears to have decided, and that which I had the honor to advocate in the Constitutional Conventions of 1846 and 1867, and which is set forth in my Messages of the last year, is to keep these great public works as a trust for the million, not seeking to make revenue or profit to the sovereign out of the right of way.

The State originally undertook the construction and administration of the public works in order to secure a facile and cheap transportation, to which private enterprise was then and long afterward inadequate. It early opened to free competition every mode of transit, even in rivalry to its own works, for the interchange of the agricultural products of the West and of the manufactures and merchandise of the East. It has not exacted from the trust a full return of its advances, but in expenditures in excess of the revenues and defrayed by taxes, and in remission of tolls, it has made large sacrifices to cheapen the cost of transportation. It has not sought to limit the advantages of its policy to its own citizens, nor has it paused because the prices — even for our own consumption — of exported cereals and other agricultural products are fixed by foreign markets, so that the benefits of a reduced cost of conveying them to the seaboard accrue chiefly to the Western producers.

Situation at the last session.

In the progress of the last session it became obvious that the retrenchment in the ordinary expenses of the canals, and in the outlays for new work recommended in the Message, were not likely to be in any degree realized. The appropriations for ordinary repairs, as passed by the Assembly and by the Canal Committee, were nearly equal to those of the previous year. The appropriations for new work, as called for by the budget submitted by the Canal commissioners to the committees of the Legislature, were at least as large as the similar estimates of the year before.

In the mean time the canal revenues for the months of September and October which are in the then current fiscal year, were falling off one quarter of their former amounts; and the

forwarders, boatmen, and others engaged in transportation were appealing for a reduction in the tolls, in order to enable them to continue their business. On an investigation, induced by this emergency, it was found that in the preceding five years the State had levied taxes of between eleven and twelve millions of dollars for extraordinary repairs, besides deficiencies in the sinking fund, thereby imposing a burden of almost three millions a year upon the taxpayers. And upon inquiry as to how these vast sums had been expended, it appeared that much had been for objects of no real utility, that many of the contracts had been obtained by sham biddings in evasion of the law, and that there was reason for suspicion as to the durability and value of the work.

Reform.

In this condition of things I proposed a reconciliation between the discontented taxpayers and the distressed transporters by a thorough reform in the service and the system, which should remit taxes, reduce tolls, and increase the efficiency of the canals.

Investigating commission.

The first step was to obtain the information necessary to enable remedies to be devised and wisely applied. The commission appointed under the joint resolution and statute, consisting of Messrs. John Bigelow, Daniel Magone, Jr., Alexander E. Orr, and John D. Van Buren, Jr., immediately after their organization, made such personal inspection of the most important parts of the canals as was possible before the water was let in for navigation; and after that was done they proceeded to investigate many of the contracts for work on the canals and the transactions connected with them.

I shall not outrun the public sense of the great and onerous service which these gentlemen have given to the State when I say that they have executed the trust reposed in them with unswerving and impartial fidelity, and with distinguished intelligence and ability.

The frauds are not the simple case of embezzlement of public money, or a cheat in the payment of taxes, but are to be traced through the complicated work of construction, and are

sheltered by the complicity or connivance of officials whose duty it is to protect the State. The truth has to be discovered and the proof obtained from unwilling and sometimes unscrupulous witnesses.

The primary object is to reform the system and establish every possible security against a recurrence of the evils. While security for the future is of transcendent importance, indemnity for the past is to be sought. Civil and criminal redress is to be enforced.

If it is a matter of toil and difficulty to make the investigations effectual, it is infinitely more so to conduct the actions in the courts to their conclusion, in cases so numerous and complicated. It will be necessary for you to make a special appropriation for aid to the Attorney-General.

Income and expenses of canals.

The income and expenses of the canals for the fiscal year ending Sept. 30, 1875, are shown by the annexed table.

STATEMENT

Showing the tolls received on each canal, and the total expenditures for ordinary and extraordinary repairs and new work during the fiscal year ending Sept. 30, 1875.

Canals.	Income tolls.	Disbursements.			Income in excess of disbursements.	All disbursements in excess of income.	Income in excess of disbursements for ordinary repairs.	Disbursements for ordinary repairs in excess of income.
		Ordinary repairs.	Extraordinary repairs and new work.	Total.				
Erie Canal	$1,708,374.72	$803,985.09	$673,098.77	$1,477,083.86	$231,290.86	.....	$904,389.63	.....
Champlain Canal	110,893.17	135,942.51	243,343.89	379,286.40	.....	$268,393.23	.....	$25,049.34
Oswego Canal	45,057.69	99,014.95	10,325.96	109,340.91	.....	64,283.22	.....	53,957.26
Cayuga & Seneca Canal	13,616.07	27,927.12	9,796.88	37,724.00	.....	24,107.93	.....	14,311.05
Chemung Canal	1,717.32	23,230.41	3,076.58	26,306.99	.....	24,589.67	.....	21,513.09
Chenango Canal	2,909.63	24,537.41	3,077.49	27,614.90	.....	24,705.27	.....	21,627.78
Black River Canal	7,214.64	44,846.17	.....	44,846.17	.....	37,631.53	.....	37,631.53
Genesee Valley Canal	12,406.26	97,841.33	9,151.18	106,992.51	.....	94,586.25	.....	85,435.07
Oneida Lake Canal	.....	.....	21,348.55	21,348.55	.....	21,348.55	.....	.....
Baldwinsville Canal	.....	.....	.....	.....	.....	.....	.....	.....
Oneida River Improvement	215.40	.....	94.50	94.50	120.90	.....	215.40	.....
Seneca River Towing Path	89.72	.....	.....	.....	89.72	.....	89.72	.....
Cayuga Inlet	369.93	.....	.....	.....	369.93	.....	369.93	.....
Crooked Lake Canal	126.09	7,396.80	.....	7,396.80	.....	7,270.71	.....	7,270.71
	$1,902,990.64	$1,264,721.79	$973,313.80	$2,238,035.59	$231,871.41	$566,916.36	$905,064.68	$266,795.83

Total disbursements on all canals in excess of tolls, $335,044.95.

Tolls in excess of disbursements for ordinary repairs, $638,268.85.

It will be seen that the income is stated at $1,902,990.64; and the explanation is made at the Auditor's office that as the receipts are a month later than the earnings, the computation includes the receipts of September, 1874, and excludes those of September, 1875. As the former month yielded $166,341.10 more than the latter, except for this mode of computation the result would be $1,736,651. The estimate in my Special Message of March 19, founded on the data there given, was $1,715,168. The calendar year 1875 gives only $1,584,018.

Real income.

The following is a comparative statement of the revenues and expenses for the fiscal years 1874 and 1875, furnished at the Auditor's office: —

Comparative statement, 1874 and 1875.

STATEMENT

Showing the aggregate receipts and payments on account of the ordinary expenses of the Canals for the last two years.

	1874.	1875.
Receipts from tolls, etc.	$2,947,972.91	$1,925,995.63
Payments to superintendents and repair contractors	$1,176,021.46	$985,105.10
Payments by Canal commissioners for repairs	121,694.91	279,616.69
Payments to collectors and their assistants	84,833.44	75,857.41
Payments to weighmasters and their assistants	12,846.39	12,118.09
Refunding tolls, salaries of officers, etc.	74,070.63	61,759.65
Reserve balance of appropriation for concreting the sixteen locks and re-trunking the Upper and Lower Mohawk aqueducts	....	52,859.01
Total expenses for the year	$1,469,466.83	$1,467,315.95
Net receipts	1,478,506.08	458,679.68

This statement shows a falling off in the toll receipts of the last fiscal year as compared with those of 1874 of $1,021,977.28, decrease in payments of $2,150.88, and a loss in net receipts of $1,019,826.40; the net revenue being $625,610.70 short of the requirements of the sinking fund under Article VII. Section 3 of the Constitution. The amount required is as follows:

Interest, in coin	$634,290.38
For sinking fund	450,000.00
	$1,084,290.38
Actual surplus	458,679.68
Deficiency	$625,610.70

Explanatory comment.

It is to be noted that the expenses during all the present year, except the last two months of navigation, — that is, up to Sept. 30, 1875, — were under the appropriations of 1874. The reductions effected at the last session do not begin to operate until Oct. 1, 1875. The diminution in business caused by the bad condition of our domestic trade, the growing diversion by the completion of railways and the reduction of tolls, all operated from the beginning of navigation, or five months out of the seven of the season earlier than the reduction of expenses. The falling off of income in the last two months of 1875, as compared with the last two months of 1874, is less than the reduction in ordinary expenses and repairs for the fiscal year beginning Oct. 1, 1875.

Future measures.

In this state of things it is obvious that our first measure should be to ascertain completely, and without unnecessary delay, the financial condition of the canals; the state of the contracts yet outstanding for extraordinary work, in order to determine what ought to be stopped or abandoned and what ought to be continued; and the means applicable to any expenditure they may require.

A second measure is the careful and thorough investigation of ordinary expenses and repairs, for the purpose of keeping them down to the lowest point consistent with the efficiency of the canals.

A third measure relates to the disposition of such laterals as are not necessary as feeders. It will be recollected that at the last session, in view of the complicated questions incident to this subject requiring legal, engineering, and business skill, and much devotion of time and attention, I recommended its reference to a special commission. The Legislature, however, preferred to charge the Canal commissioners and State engineer

and surveyor with the additional duty. I am not advised what report they will make on the subject.

A fourth measure is a radical change in the system of administration. The present machinery is chaotic, and, except with something of the unity which existed in practice in the Canal Board under the old Constitution, is incapable of acting with efficiency or economy. The abuses, perversions of law and morals, improvidence, and waste which cling around it are the growth of years. When a man of average well-meaning and average ability comes singly into one of these administrative offices, the graft develops, not its own nature, but the nature of the parent stem. It is difficult to carry out reform by instruments that are incurably averse to reform, whose indolence, comfort, associations, habits, assistants, and advisers are all naturally opposed to what they are expected to do. Every step of progress is not only through an enemy's country, but beset by unexpected betrayals. A constitutional amendment changing the system of administering the canals was unanimously passed by both Houses at the last session. Your attention is respectfully called to the importance of an early consideration of the subject.

A fifth measure is the continuance for the present year of the reduction in the tolls made for last year.

A sixth measure is to subject all the work called extraordinary repairs to a systematic and thorough scrutiny, and to discard everything that is not clearly and certainly necessary. When the *débris* of the old rotten system shall be cleared away, there is a work of real utility and small cost which will claim an early attention and for which the people would be willing to provide the means. On this topic I repeat the remarks contained in the Special Canal Message of March 19, 1875: —

"In my judgment a far more important improvement of the Erie Canal would be effected by a thorough system of ordinary repairs, which should give the water-way its proper and lawful dimensions, and by progressively deepening it, wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a

larger area of water, so that the displaced fluid could pass the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls below the present bottom; and the benefit would be realized in each portion of the canal improved, without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even, than one cent a bushel remission of tolls. It would be more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions, and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs."

I have thus briefly sketched the outline of a policy which is the best method to promote cheap transportation, not only so far as the Erie Canal is concerned, but in its general effect upon all methods of transportation. It seems to me that these measures are entitled to the effective support of the forwarders, boatmen, and transporters, as well as to that of the taxpayers and all who desire to rescue our public works from spoliation.

The following statement shows the payments for the new capitol from the State treasury, including purchase of lands, etc., to June 20, 1875:—

To Sept. 30, 1863	$51,593.66
" 1864	9,453.55
" 1865	10,860.08
" 1866 Congress Hall block	65,250.00
" 1867	10,000.00
" 1868	50,000.00
" 1869	451,215.63
" 1870	1,223,597.73
" 1871	482,942.37
" 1872	856,106.98
" 1873	1,175,600.00
" 1874	610,275.16
From Oct. 1, 1874, to June 20, 1875	1,000,600.00
	$5,997,495.16

A statement from the clerk of the present commission, which was organized on the 29th of June, 1875, is as follows: —

Amount paid on account of expenditures prior to Jan. 1, 1875	$263,659.95
Amount expended in construction since the 29th June	491,349.95
Estimated liabilities on Jan. 1, 1876	65,542.22

The Memorandum attached to the Supply Bill signed on the 21st of June contains the following observations on the appropriation for the new capitol: —

"Of the million provided for this purpose, more than two hundred thousand dollars will be consumed in the payment of arrears now existing in the nature of a floating debt, and less than eight hundred thousand dollars will be applicable to new construction.

"It is with reluctance that I assent to this appropriation. Nearly six million dollars have already been expended upon this edifice. Although the general plan has been determined, the details have not been worked out with such thoroughness and such certainty as to afford any guide as to the amount which will probably be required for the completion of the building. If it were an original question, I should have no hesitation in condemning and discarding a work of such unnecessary cost; but it cannot be now abandoned without losing all that has been thus far expended. In deciding on the wisdom of completing it, we are to consider only whether it will be worth the future outlay for its completion. What that cost will be, ought to be ascertained with all the certainty attainable. I doubted whether the work ought not to be suspended until the plans of future construction should be settled, and full assurance had that the annual expenditure should be made usefully in furtherance of those plans. In the mean time I favored a reduction of this appropriation below the amount adopted by the Legislature.

"But provisions for this general object were inserted in the Supply Bill. They perhaps justify the allowance of this item, especially as the law imposing a tax for raising the money for this purpose will necessarily go into effect, whatever might be done with this appropriation."

The new commission consists of the Lieutenant-Governor, the Auditor of the Canal Department, and the Attorney-General. The Act provides that before any portion exceeding fifty thou-

sand dollars of the sum appropriated for the construction of the new capitol should be expended, full details, plans, and specifications of the story of said building containing the legislative halls should be made and approved by the said commissioners. This requirement of the law was complied with, and the work of construction was prosecuted through the summer and autumn.

The Act further provides that "not more than one half of the said appropriation shall be expended before full details, plans, and specifications of the whole of the remainder of said building shall be made and approved in writing" by the commissioners. This requirement has not as yet been complied with, and the work upon the capitol has been suspended. The plans and specifications have been prepared by the architect, and were submitted to the commissioners on the 15th day of December, 1875, but they have not as yet been approved by the commissioners.

The determination of all the details of so extensive a building will require much careful consideration. It is the intention of the commissioners, before approving the plans for the completion of the new capitol, to ascertain and report to the Legislature the cost of execution. They are now, as I am informed, engaged in this very necessary preliminary work.

Insane asylums and reformatory.

Four State institutions are in process of construction,—three asylums for the insane and a reformatory. It might have been supposed that such an extensive provision for the insane as is contemplated in these three institutions could not become necessary on the instant, and that common prudence would have dictated that one institution should be completed before another was begun; but, unfortunately, not even the sacred influences of charity could save these works from the spirit of legislative log-rolling or the rapacity of local expenditure.

The policy of beginning everything and finishing nothing has prevailed. Construction has been on a scale of costly extravagance. At the last session two and three quarter millions of

dollars raised by taxes had been expended on these four institutions, and about four hundred and fifty thousand dollars raised by taxes and appropriated remained unexpended, and yet no considerable part of these works had been made available. The plan was adopted at that session of confining the appropriations for the year to such sums as would make available and bring into use the portions of the structures most nearly approaching completion. The construction of the other portions of those buildings, if they are to be completed according to the present plans, may be deferred until after the extinction of the bounty debt in 1877. The interval will afford an opportunity to revise the whole policy of the State in respect to these institutions, and to reconsider the plans and methods of their construction. The expenditures thus far are as follows:

Hudson River Asylum:	
Total expenditure to Dec. 20, 1875 . . .	$1,337,978.52
Buffalo Asylum:	
Total expenditure to Dec. 20, 1875	767,351.91
Middletown Asylum:	
Total expenditure to Dec. 20, 1875	454,099.38
Elmira Reformatory:	
Total expenditure to Dec. 20, 1875	760,117.98
Total	$3,319,547.79

The cost of completing these buildings is as yet a matter of conjecture; it probably would exceed what has already been expended.

It is quite clear that an outlay of five thousand dollars per inmate for the purpose of providing shelter for the unfortunate objects of public charity is unreasonable and extravagant. That would be equal to twenty-five thousand dollars for five persons, which compose the average family in this State. How many families of laborious and thrifty producers can afford to live in a house costing twenty-five thousand dollars?

In 1865 less than one sixtieth of the houses of this State were of stone, and their value was about ten thousand dollars each, or two thousand dollars for each inmate. Those of brick, which are about one eighth of the whole number, were valued

at six thousand dollars, or twelve hundred dollars for each inmate. Those of wood, which are three fourths of the whole number, were valued at eleven hundred dollars, or two hundred and twenty dollars for each inmate.

I deny that there is any sound public policy in erecting palaces for criminals, for paupers, or for the insane. A style of architecture simple and fitted to the nature of its object would reconcile artistic taste with justice toward the industrious producers, on whom falls the burden of providing for the unfortunate. Waste in such edifices is not only a wrong to the taxpayers, but by just so much it consumes the fund which the State is able to provide for the objects of its charity. Nor does the mischief stop with the completion of costly dwellings. The State still has to provide annually for the support of their inmates. By an inevitable association of ideas in men's minds, magnificent homes lead to magnificent current expenditure. The pride of officers and managers and of local admirers, and the zeal of benevolence, are freely indulged where they are gratified without expense to those who are swayed by them. It is to be remembered that, after all, the burden of taxation is chiefly not upon accumulated wealth, but upon the current earnings of the million, who carry on their productive industries in frugal homes. They ought not to be the only class disfavored by the policy of the State.

State prisons.

The following statement shows the expenditures and earnings of each of the prisons for the year ending Sept. 30, 1875: —

	Advances from the Treasury.	Received from Earnings.	Excess of Expenditures.
Auburn	$208,719.35	$76,935.62	$131,783.73
Clinton	328,638.13	133,446.25	195,191.88
Sing Sing	341,826.20	158,596.64	183,229.56
Miscellaneous expenditures not distributed, including $28,144.50 for transportation of convicts	35,344.50		35,344.50
	$914,528.18	$368,978.51	$545,549.67

The excess of advances from the Treasury over the receipts from earnings is as follows: —

In 1867 it was	$366,874.79
In 1868 "	512,547.74
In 1869 "	595,774.45
In 1870 "	461,304.99
In 1871 "	470,309.23
In 1872 "	465,881.84
In 1873 "	597,289.06
In 1874 "	588,537.42
In 1875 "	545,549.67

The number of convicts in each of the prisons, Sept. 30, 1873, 1874, and 1875, was as follows: —

	1873.	1874.	1875.
Auburn	1,104	1,202	1,312
Clinton	567	552	553
Sing Sing	1,354	1,306	1,616
Total	3,025	3,060	3,481

Although the burden imposed upon the taxpayers of the State by these institutions has been slightly decreased within the last three years, I think the people ought not to be satisfied with the present exhibit. Under a proper system and with proper management, the prisons of the State, filled for the most part with able-bodied men, ought to be self-supporting, — if, indeed, they ought not to produce a considerable revenue to the State. Other institutions of a like character, and possessing in some respects less advantages, impose no burden upon the people, and one conspicuous institution in this city affords a surplus to the county.

I recommend that a thorough inquiry be made with respect to the management of the State prisons in such manner as the Legislature may think best, to the end that such reforms, both in legislation and in administration, may be accomplished as are necessary to produce the desired result. I also recommend

to your adoption the resolution passed at the last session, which requires your concurrence, for submitting to the people the constitutional amendment therein contained relating to the State prisons.

Salt springs.

The quantity of salt from the Onondaga Salt Springs inspected during the last fiscal year was 6,589,676 bushels, less by 4,515 bushels than the production of the preceding year. The net revenue from this source was $5,148.32, showing a falling off as compared with the preceding year of $5,193.35. It is represented by the Superintendent that a considerable outlay will soon be necessary for repairing and renewing the machinery connected with the works, and for completing the sinking of new wells. I recommend that an investigation be had with respect to the necessity of such expenditure, the best method of operating the works, and the general management of the concern.

Quarantine.

The payments from the State treasury for this object during the fiscal year ending Sept. 30, 1875, were : —

Advances to commissioners for maintenance of quarantine establishment	$48,000.00
Salaries of commissioners	7,500.00
Commissioners appointed to confer with the authorities of New Jersey on jurisdiction	3,000.00
Pay of police	3,953.18
	$62,453.18

It seems to me that this establishment ought to be made self-supporting. To that end I commend the subject to your consideration.

The National Guard.

The National Guard of this State consists of eight divisions, eighteen brigades, one regiment and ten separate troops of cavalry, eleven separate battalions of artillery, and twenty-five regiments, twelve battalions, and seven separate companies of infantry. They comprise 1,505 commissioned officers and 17,908 non-commissioned officers,

musicians, and privates. The aggregate force is 19,413. The condition of the guard, as respects organization and discipline, is eminently satisfactory.

The cost of armories and the charge for the rent of such as were occupied under leases in the city of New York had become a serious burden and a gross abuse. Contracts marked with extravagance and improvidence, with favoritism and corruption, had been made. They had become the subject of litigation, and were generally held by the courts to be illegal and void. The rentals claimed are about two hundred and seventy-five thousand dollars per annum. The claims for arrears of rent amount to about seven hundred thousand dollars, and the rent to accrue, if the leases should be retained until their terms expire, would be an additional one million dollars.

The fair rent of an armory where property is so valuable as in the city of New York is so considerable that regiments which are reduced to mere skeletons cannot be kept in existence without injustice to the taxpayers of the city. For this reason six of the sixteen regiments and battalions of the first division, embracing the city of New York, have been disbanded. As the city owns four armories, there will be but six instead of twelve regiments to be provided for. It is hoped that the charge on the city treasury can be reduced to less than a quarter of its former amount. This necessary measure could not be executed without inflicting some wounds in particular cases; and I share the sense of sacrifice of personal associations and patriotic memories.

Colleges and academies — higher education.

The reports to the Regents of the University from the colleges of the State show a gratifying increase of numbers both of students and graduates. Many of the colleges have received from private liberality additions to their endowments which place them in a condition of comparative independence. The character of instruction is elevated and strengthened, and the courses are more comprehensive, and better adapted to the demands of the age.

The attendance on the academies and high schools does not much vary from that of the preceding year. These institutions, occupying an intermediate place between the colleges and the common schools, provide for the wants of those who desire more than the latter can furnish, and who are not able to meet the expenses or to give the time required by the courses of the former.

The State Library and the State Cabinet of Natural History have received valuable additions. Their condition will be exhibited in the reports of the trustees, soon to be presented.

Common School Statistics for the Year ending Sept. 30, 1875.

Total receipts, including balance on hand Sept. 30, 1874	$12,516,362.96
Total expenditures	11,365,377.79
Amount paid for teachers' wages	7,843,231.67
Amount paid for school-houses, repairs, furniture etc.	1,844,347.20
Estimated value of school-houses and sites	36,393,190.00
Number of school-houses	11,787
Number of school-districts, exclusive of cities	11,289
Number of teachers employed for the legal term of school	19,157
Number of teachers employed during any portion of the year	29,977
Number of children attending public schools	1,058,846
Number of persons attending normal schools	6,207
Number of children of school age in private schools	135,093
Number of volumes in school district libraries	812,655
Number of persons in the State between the ages of five and twenty-one years	1,579,504

State taxes in aid of common schools.[1]

The following statement shows the amount produced annually by the $\frac{3}{4}$ mill tax for the support of common schools, as provided by Chapter 180, Laws of 1856: —

[1] The amount raised by State tax for the support of common schools, prior to the Act of 1856, was eight hundred thousand dollars annually. See Section 1, Chapter 180, Laws of 1856.

1857	$1,074,982.20
1858	1,053,680.74
1859	1,053,873.04
1860	1,064,473.14
1861	1,081,325.57
1862	1,086,977.96
1863	1,090,841.11
1864	1,125,749.90
1865	1,163,159.76
1866	1,148,422.22

The following shows the amounts produced by the $1\frac{1}{4}$ mill tax for this object, as provided by Section 3, Chapter 406, Laws of 1867 : —

1867	$2,080,134.65
1868	2,207.611.42
1869	2,325,150.96
1870	2,458,751.48
1871	2,565,672.37
1872	2,610,784.31
1873	2,662,032.98
1874	2,711,634.84
1875	2,959,725.13

A standing appropriation, such as used to exist before 1846, is prohibited by the Constitution, which requires a revision of old appropriations at the expiration of every two years. The system of making formal appropriations in obedience to a standing law is liable to the objection that it practically defeats the policy of this constitutional provision. The Legislature does not in fact reconsider, each time, how much ought to be appropriated to the object, but mechanically conforms to the standing law which fixes the rate. The assessors become in effect the power that determines the taxes. It cannot be supposed that the real value of property subject to taxation has increased during the period when nearly a million has been added to this item of them by nominal enlargements of the valuation, nor can it be doubted that in all business equal services can now be obtained at less prices than

The method of appropriation.

in 1867. The appropriation ought to be for a specific sum, and the taxes adjusted to provide that amount.

State certificates.

An Act amendatory (Chapter 567) of the general school law was passed at the close of the last session, and became a law by receiving the Executive signature on the 9th of June, 1875. The Fifth Section of that Act made a material change in the law regulating the granting by the State superintendent of certificates of qualification to teach. That officer was authorized by Section Fifteen of the General School Act, passed May 2, 1864, to grant certificates "on the recommendation of any school commissioner or on other evidence satisfactory to him."

A clause authorizing the State superintendent to issue, "in his discretion," certificates of qualification to graduates of any seminary of a private corporation known as the Sisterhood of Gray Nuns, on their filing with him their diplomas, appears in an amendment of the charter by Chapter 353 of the Laws of 1875, which became a law on the 15th of May. This provision did not purport to make a person having such diploma a qualified teacher, like a person having a diploma of a State normal school, but merely vested the State superintendent with a discretion to grant to such person a certificate of qualification. That power the superintendent had before, and has had for the previous eleven years. The provision had no real effect; it conferred no new power on the superintendent; it added nothing to his existing power: but it bore the appearance of a special grant of a privilege to one corporation, — which may be presumed to have escaped attention, for the Bill passed the Assembly once and the Senate twice by the affirmative vote of every member present. But the discretionary power of the superintendent, under the law of 1864 and under this Act, was afterward completely abrogated by the law of the 9th of June. He was prohibited from granting any certificates except on public examination. The law of the 9th of June was later than the Gray Nuns' Act, and repealed the clause of that Act which authorized the superintendent, in his discretion, to

grant certificates to graduates of the seminaries of the Gray Nuns' corporation. It went farther; it repealed the power which he had under the law of 1864 to do the same thing. If the Gray Nuns' corporation derived any special privilege from the Act of the 15th of May, that privilege was destroyed by the law of the 9th of June. A uniform rule is now made applicable to all.

This result is in accordance with the policy of this State as established by the recent constitutional amendment relating to the public schools, which has been and is to be obeyed and executed in good faith.

Pauperism.

The report of the State Board of Charities will be presented to the Legislature, and I commend it to your earnest attention. The question as to the proper mode of providing for the chronic poor is addressed not only to the conscience and the feelings, but also to the reason and the judgment; it is a question not so much of philanthropy as of political economy. The members of the Board bring to its discussion great zeal, large experience, and rare intelligence. Without committing myself to the support of all their recommendations, I ask for them your thoughtful consideration.

The Act of 1875, providing for the separation of pauper and destitute children from the adults of the same class, has been put in general operation; but years must elapse before its beneficial results will be fully apparent. This legislation has met with warm approval in other States, and will no doubt be followed by many of them at an early day. It remains in this State to secure the separation of children convicted of petty offences from older offenders while confined in our penal institutions.

The subject of providing work for paupers, especially of the class styled "tramps," is commended to your consideration. Even if their earnings were small, the fact that this class of persons were compelled to labor in return for their subsistence, would doubtless lessen the number of applicants for

admission into our poorhouses, and for outside relief, and would induce many of them to apply themselves to regular employments. I renew the recommendation made in my last Annual Message for a thorough revision of the poor-laws.

The State census.

The census taken during the last summer makes the population of the State 4,705,208. The utility of the information it collects, aside from the primary object of providing the means for a re-apportionment of the representation in the Legislature, depends largely upon the promptness with which the compilations are made and furnished to the public. I recommend that provision be made to complete the work as early as the 1st of next December, and that the requisite appropriation for that purpose be made.

Municipal government.

A commission to consider this important and interesting subject has been appointed under the joint resolution of the last session, and is organized and holding its sittings. The restrictions necessary to arrest the creation of municipal debts, which has become a grave evil, affecting one half of the people of this State, and calling urgently for redress, may well command the attention of the commission and of the Legislature, independently of the complicated questions involved in the structural organization of municipal government and the distribution of its powers.

Centennial Exhibition.

A State Centennial Board for New York has been appointed, under Chapter 525 of the Laws of 1875, to represent this State, in co-operation with the Centennial Commission appointed by the President of the United States, for service prior to and during the international exhibition, to be held at Philadelphia, in commemoration of the one hundredth anniversary of the Declaration of Independence. The event not only appeals to the people of the whole United States by the patriotic associations which attend it, but it will be an occasion of unprecedented interest in the opportunity it affords to all our citizens of a personal inspection of the progress and state of the industrial arts in all the countries of the civilized world.

Eighty-four banks were doing business under the laws of this State on the 1st of October last. Eight banks were organized and began business during the fiscal year ending October 1. During the same time one bank failed, and three were converted into national banks.

Banks.

Circulating notes to the amount of $9,314 were destroyed by the Bank Department, and forty-four banks were credited with lost circulation during the year to the amount of $246,649, the time for redeeming the same, after the usual legal notice, having expired. The amount of circulation outstanding was, on the 1st day of October last, $849,226.50. Of this amount, the sum of $218,528 was secured by deposits of cash, stocks, or stocks and mortgages. The balance, $630,698.50, is not secured, it having been issued by banks chartered previous to the passage of the free banking law. There remain but twenty-three of these banks that have not taken steps finally to redeem their notes.

There were one hundred and sixty savings-banks on the 1st day of July last. Of these five were in process of closing their business. Five have since closed, three by reason of insolvency. The new general law for the regulation of savings-banks does not require them to report in July, as they have formerly done. The aggregate of assets of these institutions, as appeared from informal reports made to the Bank Department for the 1st of July last, was $336,308,236.43. Their deposits amounted to $316,335,617.82, belonging to 891,992 depositors as represented by the number of open accounts on that date. The increase in deposits during the six months ending July 1 last was upward of twelve millions of dollars, and the number of depositors or open accounts increased during the same time 19,494. The total increase in deposits during the year 1874 was $18,415,564, and in the number of depositors 33,026. The aggregate of assets as shown above for July last was not made up in the same manner as that for January 1 last, therefore such aggregate

Savings-banks.

cannot be used for the purpose of comparison. The estimated amount of such assets on the 1st of July last may, however, be stated at three hundred and forty millions of dollars.

Recommendation as to savings-banks.

It will be observed that the number of depositors in the savings-banks in this State is larger than the number of electors who have ever voted at an election, and that the aggregate of their deposits is more than one eighth of the assessed valuation of all real and personal property. In view of the fact that these are the savings of the industrious poor, who are less able to assert and protect their own interests than any other class of holders of such vast amounts of property, it is an especial duty in our legislation to shield them from injustice. The absolute safety of their deposits is an incentive to make savings, which is an important object of public policy. Frequent reports by these institutions should be required; the provisions regulating the character of their investments should be revised, with a view to secure greater safety; new guards should be instituted against the tendency of administration to fall into favoritism toward the officers, sure to prove dangerous to the trust; and it should be inquired, in view of the recent and numerous failures, what defects may be shown to exist in the present law, and whether further penalties in respect to maladministration can be provided. I commend the subject to your consideration.

Trust, loan, and indemnity companies.

There were eleven trust, loan, and indemnity companies reporting to the Bank Department July 1 last, one having closed its business during the year preceding. A new trust company began business Sept. 1, 1875, whose capital is not included in the summary. The aggregate capital of these corporations, paid in, as shown by their reports, was $11,584,475; the total amount of their assets was $69,654,948; and the amount due from them to their depositors was $50,365,569.

The estimated amounts of assets held July 1 by banks,

savings-banks, trust, loan, and indemnity companies, was $520,000,000; the amount due to their depositors was, approximately, $432,000,000; and their profits, including surplus fund, may be estimated at $39,000,000.

The number of insurance companies subject to the supervision of the Insurance Department on the 19th day of November, 1875, was two hundred and eighty-one, as follows: — Insurance companies.

New York joint stock fire insurance companies	102
New York mutual fire insurance companies	8
New York marine insurance companies	9
New York life insurance companies	22
New York Plate Glass Insurance Company	1
Fire insurance companies of other States	91
Marine insurance companies of other States	1
Life insurance companies of other States	25
Casualty insurance companies of other States	4
Canadian fire insurance companies	3
Foreign fire insurance companies	11
Foreign marine insurance companies	4
	281

The total amount of stocks and mortgages held by the Insurance Department for the protection of policy-holders of fire, life, and casualty insurance companies of this State and of foreign insurance companies doing business within it was $11,036,053, as follows: —

For protection of policy-holders in fire insurance companies of this State	$400,000
For protection of policy-holders generally in life insurance companies of this State	3,790,091
For protection of registered policy-holders exclusively	3,184,542
For protection of casualty policy-holders exclusively	1,000
For protection of plate-glass policy-holders exclusively	50,000
Carried forward	$7,425,633

Brought forward	$7,425,633
For protection of fire policy-holders in insurance companies of other States	60,000
For protection of fire policy-holders in insurance companies of Canada	643,120
For protection of fire policy-holders in foreign insurance companies	2,604,300
For protection of life policy-holders in foreign insurance companies	303,000
Total deposit	$11,036,053

The assets of the life insurance companies of this State amount to nearly two hundred millions of dollars; the amount insured by them to one thousand millions; and their annual receipts to more than sixty millions. The magnitude of these sums, and the duration and fiduciary character of the engagements of these corporations, make it specially important that the interests of the policy-holders should be guarded with jealous care.

Depression in business.

It cannot be doubted that large classes of our people are suffering great inconvenience from the present state of trade and of manufacturing and mechanical industry, and from the decay of numerous enterprises. Few kinds of business have been recently carried on at a profit. Labor finds scanty employment even at reduced wages. Incomes are lessened, or fail altogether. Many investments have become wholly or partially unremunerative. Property is shrinking, losing for the time its circulatory character, and becoming unavailable as a resource to pay debts or to raise money. It is not a convulsion, but a partial paralysis. There is nothing of what is called a pressure for money, there is no panic; but a fear to lend except on certain security, and a timidity in borrowing for new undertakings by most persons of prudence or credit.

Causes.

It is to be hoped that, amid these evils, the germs of a better future are springing up, to renew in their origin the elements of individual and social prosperity; but in the mean time attention is naturally drawn to the causes

of a state of things which inflicts so much distress. Such seasons have recurred at intervals in the experience of this and other countries. They have usually been produced through the destruction of large masses of capital by wars, revolutions, conflagrations, or failures of crops, or by a temporary mania for bad investments, or by violent reactions of credit. The known facts of our recent business history leave no doubt as to the origin of the state of things we are now experiencing.

Waste of national capital by excessive governmental consumption.

Eleven years ago our country emerged from a vast civil conflict, in which its aggregate wealth had been impaired to the extent of probably two thousand millions of dollars by a governmental consumption exceeding the whole net income of the people; to say nothing of the destruction of property, industries, and productive capacities incident to military operations. Never was it more necessary that peace should bring healing on its wings.

To replace the capital destroyed, to restore the elements of future natural growth, should have been the object of our policy. A prompt reduction of the enormous governmental expenditure was the first condition. A renewal of the industries of the great communities of the South, which produce so large a share of our exports and raw material, was of great importance. Energy, skill, and economy in production, and frugality in private consumption, the wise conduct of business, and a judicious application of capital and labor were essential. These chief elements of private prosperity were dependent upon public conditions. They were to be promoted by sound government finance, by good methods of revenue, not unduly swelling the cost of the taxes to those who pay them beyond their produce to the Treasury; by a discreet management of our vast fiscal operations and of the currency and of the banking system; by a sober and stable governmental policy, not stimulating to speculative adventures, not inciting miscalculations in business, not enhancing charges for services and risks in commercial transactions.

How completely these conditions have been reversed during the eleven years since the war, appears in a retrospect of the actual events of that period.

Present scale of governmental expenditure.

The extravagance of our governmental consumption is illustrated by a comparison of the public expenditures of 1870 — five years after the close of the war — with those of 1860 and 1850.

TAXES IN THE UNITED STATES

	1850. Gold.	1860. Gold.	1870. Currency.
Federal	$40,000,000	$60,010,112	$450,000,000
State, county, city, and town	43,000,000	94,186,746	280,591,521
	$83,000,000	$154,196,858	$730,591,521
Population	23,191,876	31,443,321	38,558,371

TAXES PER HEAD.

Federal	$1.72	$1.91	$11.67
Local	1.85	2.99	7.24
	$3.57	$4.90	$18.91

Aggregate taxation of eleven years.

The aggregate Federal taxation of the eleven years now closing, computed in currency from the official statements, is more than $4,500,000,000. The local taxation, assuming the census statement for 1870 as an average, is more than $3,000,000,000. The aggregate taxation exceeds $7,500,000,000.

Its relation to national savings.

The daily wants of the masses of mankind, even in the most productive and prosperous countries, press closely upon their daily earnings. It is only a small portion of their current income which they are able to save and to accumulate. In Great Britain and Ireland, despite the wealth which their people have long been storing up, especially in machinery and moneyed capital, — despite the yearly influx of one hundred and fifty millions of dollars from interest on investments in other countries, — the annual growth of wealth from the savings of all their people is not deemed

by the best authorities to exceed six or seven hundred million dollars.

The accumulated wealth of the United States is the result of a shorter period of growth, and is less in amount. We have to pay to foreign creditors annually, in coin, more than a hundred million dollars. We are richer in the natural powers of the soil, and our labor is, on the whole, more efficient. We earn more, but have less disposition to save, and less of the habit of saving.

A governmental consumption in every year, in bad as well as good years, must be considered greatly excessive when it amounts to a share of the national earnings larger than the whole people are able to save in prosperous times for all new investments; for erecting dwellings and other buildings; for improving farms, increasing the stock of live animals and of agricultural implements; for all manufacturing and mechanical constructions and machinery; for all warehouses and stores, and increased supplies of merchandise; for ships, and steamers, and telegraphs, and railroads, and their equipments; for all objects which individual and corporate enterprise provide for the future in the progress of a populous and rapidly growing community.

Such consumption greatly excessive.

Such taxation is in itself a monstrous evil, and its incidents aggravate its direct injuries. When the exaction from the people was, as in 1860, one quarter of its present amount per head, even if it were unscientific and unskilful in the levy, the mischief was comparatively inconsiderable. But with the quadruplication of the exaction, the difficulty of obtaining good methods of imposing it is greatly increased, and the mischiefs of bad methods become well nigh intolerable.

Incidental evils.

When governments take from the people for official expenditure nearly all the surplus earnings of individuals, science and skill in the art of taxation become necessary, — necessary to preserve and enlarge the revenue, necessary to gild the infliction to the taxpayers. Our present situation is that we have more

than European burdens, as seen in the most costly governments of the richest of modern nations supporting immense navies and armies and public debts; and to these burdens we have conjoined an ignorance and incompetency in dealing with them which is peculiarly our own. We have not yet acquired the arts belonging to a system which the founders of American government warned us against, and fondly believed would never exist in this country.

Sacrifice caused by unskilful modes of taxation.

The consequence is that the pecuniary sacrifices of the people are not to be measured by the receipts into the treasury. They are vastly greater. A tax that starts in its career by disturbing the natural courses of private industry and impairing the productive power of labor, and then comes to the consumer distended by profits of successive intermediaries and by insurance against the risks of a fickle or uncertain governmental policy and of a fluctuating governmental standard of value, blights human well-being at every step. When it reaches the hapless child of toil who buys his bread by the single loaf and his fuel by the basket, it devours his earnings and inflicts starvation.

A governmental class of tax-consumers.

Another evil of such a system of excessive taxation is that it creates and nourishes a governmental class with tendencies to lessen services and to enlarge compensation, to multiply retainers, to invent jobs and foster all forms of expenditure, tendencies unrestrained by the watchful eye and firm hand of personal interest, which alone enable private business to be carried on successfully. In other countries such a class has found itself able, sometimes by its own influence, and sometimes in alliance with the army, to rule the unorganized masses. In our country it has become a great power, acting on the elections by all the methods of organization, of propagating opinion, of influence, and of corruption. The system, like every living thing, struggles to perpetuate its own existence.

Every useful and necessary governmental service at a proper cost is productive labor. Every excess beyond that, so far as

it is saved by the official, merely transfers to him what belongs to the people. So far as such excess is consumed, it is a waste of capital as absolute as if wheat of equal value were destroyed by fire, or gold were sunk in the ocean.

Probably such waste by governmental expenditure in the eleven years since the war amounts to, at least, as much as our present national debt.

Waste larger than national debt.

It cannot be doubted that the systematic and extreme misgovernment imposed on the States of the South has greatly detracted from our national prosperity. In those impoverished communities it has not stopped with the ordinary effects of ignorant and dishonest administration. It has inflicted upon them enormous issues of fraudulent bonds, the scanty avails of which were wasted or stolen, and the existence of which is a public discredit, tending to bankruptcy or repudiation. Its taxes, generally oppressive, in some instances have confiscated the entire income of property, and totally destroyed the marketable value.

Misgovernment in the South.

In a region five times as large as the British Isles and three times as large as France, abounding in all the elements of natural wealth, it has destroyed confidence and credit in all transactions, diffused uncertainty and distrust everywhere, and consumed existing capital, while retarding production and paralyzing the enterprise by which such waste might be repaired and future growth assured.

Its effects.

This system, after its character became known to us as well as to those directly affected, abhorred by all the intellect and virtue of the communities in which it exists, and by their public opinion, has been maintained through long years by the favor and patronage of the Federal Government, by the moral coercion of its prestige, by the standing menace and occasional exercise of its military power.

How it is maintained.

It is impossible that such wrongs should not react upon us. The immediate sufferers by it are the producers of four tenths of the exported commodities, excluding specie, of our whole forty millions of people, and of the

Injury to our own prosperity.

most important raw materials of our own domestic manufactures. They are agricultural communities, which more than any others sell what they produce and buy what they consume. They are our most valuable customers for the products of our own industries and for our merchandise, and they make us factors in all their transactions. The State of New York, which contains the commercial metropolis, receives the largest injury; but its consequences extend throughout the whole country.

Excessive speculation.

Other influences have been at work to deteriorate the financial condition of our people. The period has been full of tendencies to unsoundness in the management of private business and in the habits of families and individuals. A series of speculative excitements has incited to enterprises which have turned out to be unremunerative and to investments which fail to yield revenue and have lost their salable value. The capital embarked in such undertakings is destroyed. Large classes find their incomes diminished and their convertible property reduced.

Over-trading.

Even the operations of regular business partook of the spirit of the times, and became too much expanded. Profits which came in part from the swelling of nominal prices tempted those who were unexpectedly enriched to count on their continuance and to enlarge their undertakings or engagements under that illusion. One who had half his capital invested in land and buildings and machinery (which is called fixed capital), and half invested in raw materials and funds to employ workmen (which is called circulating capital), and was doing a safe and easy business, was induced, for the purpose of enlarging that business, to double his investment in fixed forms. He therefore needed double the circulating capital, and instead of owning it all, had to borrow it all. The turn of the times disabled him from selling an enlarged product, or perhaps even an equal product, or of selling without loss; and when he needed loans to double the amount of his former floating capital in order to carry on his business, and

more in order to hold his product for a revival of the market, he found that lenders had become timid. Another discovered that an enterprise which may be good takes longer to bring returns than he anticipated. Another began when credit was easy, and failed to foresee how changeable that condition is; and even though his hopes of profit were undiminished, found it difficult to carry his loans.

Effects general.

When large classes suffer under the effects of these miscalculations, the influence will extend more or less to nearly all the community. A period of falling prices following a period of rising prices generates such results. Great fluctuations in the hopes and opinion of the public, creating vicissitudes of credit, are the secondary cause, as they are themselves the results of some primary cause.

Exaggerated cost of middlemen.

An outgrowth of the same morbid condition is the unusual and unreasonable disparity now existing between the wholesale price which the producer receives and the retail price which the consumer pays. No doubt prolonged fluctuation in prices tends during the upward movement to increase the charges of middlemen and to enlarge the class; but the root of the evil is the uncertainty and instability. The importer adds to the price of every article he imports, the exporter reduces the price he pays for every article he exports, as insurance against the possible variation in the value of greenbacks when converted into the money of the world, and against the possible changes of governmental policy at Washington. Nor can it be doubted that the condition of things has been unfavorable to economy and efficiency in the management of business, to frugality in private expenditure, and to energy in production.

Such are the immediate causes which have occasioned excessive and unnatural consumption of our national capital, and which have retarded the natural processes of repair and growth during the last eleven years. What are the ultimate causes, and what are the remedies ?

To the people of this State these are interesting inquiries.

In 1874 our State tax was nearly sixteen million dollars; our local taxes were over forty-two million dollars. Our share of the taxes of the Federal Government, on the average of eleven years, if computed on population, would exceed fifty million dollars; or if computed on consumption, according to the estimate of the Finance Committee of the Constitutional Convention of 1867, would for the year exceed eighty million dollars.

New York's interest in these questions.

The Federal Government has the direct and exclusive responsibility for its own immense expenditure and for its calamitous policy in respect to the great producing States of the South. It has likewise controlled the currency and the banking of the country; it has been the principal dealer in the precious metals; it has conducted vast fiscal transactions. Its financial secretary has held in his hand from day to day the supply and the rates of the loan-market in the centre of capital and commerce, the terms of our foreign exchanges, the prices of exports and imports, the quality of the circulating medium, the fluctuating standard of values recognized by law as the rule in all dealings and all contracts. By the force of its example; by its ascendency over opinion acquired in a period of public danger, during which the people formed the habit of following its leadership; by its means of propagating the ideas according to which its own operations were conducted, — by all these, as well as by the direct effects of its action, its measures, and its policy, the Federal Government has therefore practically dominated all business and all industries, and created conditions which shape the conduct of individuals in their production and consumption, and of local governments in their expenditures, taxation, and creation of debt.

Action of Federal Government the ultimate cause.

It is natural that such a condition of men's business affairs should be prolific of illusory and mischievous schemes for relief. A vague notion is extensively entertained that a new issue of legal-tender notes would afford an effectual remedy. This fallacy is largely due to the

False remedies.

false theory pervading nearly all the literature of political economy as to the agency which the quantity of the currency, even when equivalent to coin, has in causing cycles of high and low prices.

Erroneous theory.

As high prices and expanded currency, and low prices and contracted currency, have been usually found together, the effect has been mistaken for the cause. It is often assumed that the banks, even when redeeming their notes in coin, can expand their issues in excess of the needs of the community, and thereby originate and consummate a general and prolonged rise of prices.

Analysis of the facts.

An analysis of the function of the convertible bank-note, or of the processes by which cycles of high prices occur, will equally confute this opinion. A study of the order of the events which have happened in periods of rising prices in England and the United States under a convertible currency shows that usually the speculative movement at all stages precedes the increase of bank-notes.

Bank-notes an insignificant part of credit machinery.

The convertible bank-note is but a small portion of the instruments of credit used in a commercial country. It is adapted to the wants of persons who do not keep bank accounts, and the wants, in petty transactions, of those who do keep bank accounts. It bears no interest; and the holder has a motive to keep on hand only so much as he thinks he may require for expected or possible purchases or payments, and to invest or lend the surplus so that it will become productive.

If a bank lends its note to a borrower to make a payment or a purchase, the use for that purpose is but for an instant. Unless the note is received by or passed to some person who detains it for a future purpose, it immediately goes back to the issuer through the exchanges with other banks. It has to be redeemed by reducing other loans, or by a temporary loss of a portion of the usual reserve of the issuer. The life of a bank-note is made up of a succession of instantaneous uses, alternating with a succession of prolonged detentions.

The quantity that will stay out at any given time depends mainly on the expectancy of individuals as to future transactions, and, in a lesser degree, on the state of prices which vary the amount used in the same transaction. In times of rising speculation the wants of the community absorb a larger quantity; each transaction employs an amount enlarged in proportion to the enhanced prices; transactions become more frequent; and the detentions of the means of future transactions are increased by a greater disposition to make them, and less care to economize interest.

It is the competition of buyers which puts up prices in a period of speculation. Bank-notes have infinitely less to do with originating speculation, or even furnishing the means whereby it can be sustained, than the other parts of the machinery of credit.

Bank-notes, or currency, as they are called, are but an insignificant portion of the means of purchase or payment. The transactions effected by check, operating to transfer bank deposits, in the city of New York amount now in every eight days — and some years ago amounted in every five days — to as large a sum as all the legal-tenders and bank-notes in the hands of the people of the whole United States. The payments effected at the London Clearing House amount in every two days to as much as the whole circulating medium of the United Kingdom. The other instruments of credit by which business is carried on — such as book accounts, notes of hand, bills of exchange, drafts, checks on bank deposit — are thus many times the volume of bank-notes.

Other instruments of credit preferred.

Speculative purchases are nearly always initiated by the use of personal credit. In such times confidence is high, and credit is freely given and readily accepted. The transactions are generally made on book-accounts or notes of hand. These are at the command of the buyers in unlimited amount, and without delay or inconvenience. Bank credits, called deposits, like bank-notes, can be obtained only by borrowing. For such purposes bank-notes are used only

in small transactions and to a comparatively insignificant extent.

The issue of bank-notes, if not limited to a fixed amount, is generally restrained by laws which require a deposit of securities with the government; and the process of issue is so slow and inconvenient that a sudden and large increase is not possible. Those that are in the hands of the public cannot easily be collected in large amounts, but are scattered in small sums among millions of holders throughout a continent.

Bank-notes slow and difficult of increase.

On the whole, then, it is demonstrable that bank-notes, or currency when convertible, have less agency in originating or facilitating a general speculation than any other portion of the vast machinery of credit of which they form so inconsiderable a part. The false theory, that they are the master-cause of prices and fluctuations of prices, and that a governmental regulation of their volume will avert the tremendous vicissitudes in business to which commercial countries, carrying on vast credit transactions, are periodically subject, was the basis of the plan adopted in 1844 on the re-charter of the Bank of England. The theory was then seen, by a few of the best thinkers, to be destitute of truth; it has since been completely refuted by experience.

Conclusion.

In the infancy of the very modern science of political economy a metaphor was accepted as an axiom. It was said that if purchasers should suddenly find two gold coins for one in their pockets, they would pay double price for commodities. The proposition has no truth in it, except by assuming as a condition the result to be proved. It would not be true of any one buyer; it could not be true of all collectively, unless a fall in the value of gold had previously happened. The increased quantity could exist only as a consequence of an increased demand at the same value, or of a decline in the cost of production. In modern times the increase in wealth and commerce is many fold the increase of population; the medium of exchange required is vastly larger

A prolific fallacy.

than the accumulation of the precious metals; and an increased extension of credit machinery has become necessary. Bank-notes or other circulating credits cost as much to all, save the issuer, as an equal value in coin; they have to be paid for by all who use them. If individuals prefer to use coin to even a small proportion of their ability, or to hold their savings or reserves in coin, — if traders, commercial companies, and governments increase their reserved stocks of bullion to even a small percentage of the extension of their operations, — the absorption would outrun the production of the precious metals, taking no account of the insatiable demand of the Asiatic nations.

Price not a ratio to quantity.

The fact is that price is not a mathematical ratio, to be computed like a logarithm. The variations of the market are estimated by reasoning beings on the best judgment they can form of the happening and the effect of future events. The laws of market or temporary price are different in every case. An excess of oranges, which perish in a few days, or of artificial flowers, which go out of fashion, is worthless. An excess of gold, which is indestructible, and easy, cheap, and safe to hold, involves a loss of interest at the lowest rate for the period it is likely to remain on hand.

Law of depreciation of inconvertible currency.

The depreciation of our legal-tender treasury notes is not to be measured by any arithmetical formula. The law which governs it is the discount for interest until the probable time of payment, and for insurance against risk, as those two elements are estimated by the general judgment of investors. To create a demand for it, by receiving it in Government transactions, or to reduce its supply below the demands created by law from individuals for use as legal tenders, is for the Government to make an artificial market which operates, so far forth, as a practical redemption.

How issues of legal tenders inflated prices.

It is consistent with this reasoning to admit and assert that the issue of legal-tender treasury notes during the late civil war exerted great power over prices. It acted on the public imagination in respect to future

values. It excited great distrust that the Government, instead of having recourse for its means of war expenditure to the vast mass of our national wealth by loans and taxes, resorted to a debasement of the comparatively insignificant fund of circulating credits with which private business is carried on. It excited a grave sense of doubt how often, and to what extent, it might recur to so dangerous an expedient, — great misgiving as to the time and the certainty of ultimate redemption. Under these influences, in the vicissitudes of military operations, the discount became large, — touching, at its extreme point, 65 per cent on the par value of the issues.

Influence of opinion and imagination.

The human imagination seldom fails to exaggerate any desired or dreaded reality to which it looks forward, and it acts a great part in those cycles of ascending prices and descending prices which happen in highly commercial countries. The origin is in some event creating an anticipation of a rise in the market value of one or more commodities, which extends as by contagion to others, or in an expectation of a general rise of prices. The upward movement sometimes continues for several years. The excitement begins with dealers for profit or speculation. The instruments of credit first brought into requisition are those which are commonly used by these classes. The small consumers are the last reached. Then bank-notes are expanded, and they generally continue to increase for some time after the downward turn of the speculation.

Reaction.

The reaction would take place by the mere exhaustion of the speculative impulse. Sometimes it does happen without any other cause. A speculative movement, when it ceases to go upward, can but fall. But often some special cause intervenes to precipitate the catastrophe.

Causes of present reaction.

In our present case the most important cause of reaction is the immense waste of our capital, which has gone on in all the modes described, and especially by excessive governmental consumption. An accessory cause is the fall in prices of many of our staples, which are now

produced in excess of the capacity of private consumption by an impoverished people. There are also moral causes acting on the public mind. A popular error existed that prices would not fall so long as the volume of legal-tenders and bank-notes continued undiminished. Many made their business calculations on that theory, and are disappointed, and their confidence in their own opinions unsettled.

These special causes, in addition to the natural exhaustion of a fictitious excitement, broke the public illusions which had been generated by false systems and false theories. A great change ensued in the opinion and feeling of the people, in confidence and credit, in the voluntary machinery of business, which expands and contracts according to the fluctuating temper and purposes of individuals. A corresponding fall of prices resulted.

Currency expansion failed to stop reaction.

But the quantity of legal tenders and bank-notes in the hands of the public had not been diminished. The quantity, excluding those held by the Treasury and the banks, was larger at the crisis in September and October, 1873, than at any previous time. Yet the continuance of the volume of the currency, the enlargement of it, did not inflate prices — did not even stay the fall of prices.

Moderate issue futile.

In such a state of facts it is obvious how utterly futile to arrest, how more than futile to reverse, the operation of these potent causes would be a new issue of any moderate quantity of legal tenders. A sudden and unexpected deficiency of currency sometimes happens; and before business can be adapted to the new condition, or can find a substitute in some other instrument of exchange, much temporary inconvenience may be felt. Such a state of things, to which a new issue might be adapted, does not exist. On the contrary, there is assuredly an adequate supply of currency for the wants of business, and even a surplus. In eight years out of ten the demand for from 5 to 10 per cent additional currency in the autumn to move the crops creates what is called a "fall pinch." There was none in 1875. The surplus currency previously on hand more than provided for that special

temporary demand. The banks continued to lend their balances on call at low rates. The tendency to reduce the circulation because of the lack of profitable employment is still manifest. The New York city banks reduced their outstanding notes, between 1873 and 1875, from twenty-eight million to less than eighteen million dollars.

Nor would such an additional issue of legal tenders give any direct relief to embarrassed persons. The notes issued would have to be paid for. The difficulty with embarrassed persons is that they have not available property to convert into currency. If they had, the conversion could be as well effected with the existing mass of currency as after such a new issue.

Would not relieve embarrassment.

Nor would any moderate issue of legal tenders have the least power to revive the condition of business through which we have passed, — the condition of high and rising prices; of universal disposition to enlarge operations, undertake new enterprises, and enter into new speculations; of unsound confidence and reckless use of credit, — a condition which imparted an apparent but fictitious prosperity to everything and everybody, and furnished an unnatural market for all property. Experience shows that, after such a state of business a period follows in which the opposite ideas and feelings prevail. Such is the case now. With all the agencies having real power to create such a condition of business, operating strongly in the contrary direction, the effort to reproduce that condition by an agency never capable of much effect would be perfectly futile. If the Treasury should pay out a moderate additional quantity of legal tenders, they would not go into circulation or act on prices; they would merely accumulate in the money centres and reduce the rate of call-loans of bankers' balances.

It would be only by a large issue, or the menace of a large or indefinite issue, that a decided effect on prices could be produced. That would create alarm of such an impending depreciation as to threaten creditors with a confiscation of their debts, and holders of

Indefinite issue would, moderate issue might, cause disaster.

currency with its loss; and they would hasten to exchange it for property. Any issue which should act on the imagination, inciting wild estimates or wild fears of the future, might induce a speculative depreciation of the price of the currency and inflation of the prices of property. The evil, even of a moderate issue, when the currency already exceeds the wants of business, and the increase cannot be pretended to be for any legitimate purpose, especially if the object of removing individual distress by creating fictitious prices be avowed, is that it strikes at the root of all confidence and all credit. If the principle be once adopted, everybody will inquire how often such an expedient may be repeated, and how far it may be carried. An attempted expansion of the petty volume of the currency under circumstances which cause a real contraction of the whole vaster volume of credit machinery, which fill all lenders with dismay, and which destroy public confidence, hope, and faith, that are the basis of credit systems and credit operations, is self-destructive; it can be prolific of nothing but general disaster.

Sound finance demanded.

The temper which now predominates among the people revolts at financial quackery. It is no longer susceptible to flattering illusions which have exploded amid the wrecks of individual fortunes and private prosperity. It is excessively incredulous. It demands sound measures, such as commend themselves to the judgment of the best intellects and the best experience.

Specie payments without convulsion.

After eleven years of convulsion without a restoration of specie payments, it now claims a restoration of specie payments without a convulsion. The problem does not seem difficult. Resumption by the Government will completely accomplish resumption by the banks. The Treasury has only, by gradual and prudent measures, to provide for the payment of such portion of the outstanding Treasury notes as the public, not wishing to retain for use, will return upon it for redemption. The sum required in coin, if the preparations be wisely conducted, so as to secure public

confidence, will be what is necessary to replace the fractional currency and to supply such individuals as prefer coin to paper for their little stores of money, and also what is necessary to constitute a central reservoir of reserves against the fluctuations of international balances and for the banks. To amass a sufficient quantity by intercepting from the current of precious metals flowing out of this country, and by acquiring from the stocks which exist abroad, without disturbing the equilibrium of foreign money-markets, is a result to be worked out by a study of all the conditions and the elements to fulfil those conditions, and by the execution of the plans adopted with practical skill and judgment. Redemption, beyond this provision of coin, can be effected as other business payments are effected, or in any method which converts investments without interest into investments upon interest on terms the holder will accept, and by such measures as would keep the aggregate amount of the currency self-adjusting during all the process, without creating at any time an artificial scarcity, and without exciting the public imagination with alarms which impair confidence, contract the whole large machinery of credit, and disturb the natural operations of business. The best resource for redemption is that furnished by public economies, for it creates no new charge upon the people; and a stronger public credit is certain to result from sounder finance, and will reduce the annual cost of the national debt.

Example of France.

These opinions, deduced from reason, are confirmed, in a recent example, by experience. France, in her ten months' contest with Germany, incurred a war expenditure of one thousand million of dollars in specie values, and in the twenty-eight months following the peace, paid an indemnity of one thousand million of dollars in specie, or its equivalent, to a foreign country. These great operations were carried on without causing a depreciation of the currency beyond $2\frac{1}{2}$ per cent at its extreme point, and without disturbing the general business or industry of the people.

Our great necessity.

What is most needed now is that the public mind be reassured by a wise, safe, and healing policy. The dread of imaginary evils ascribed to the methods assumed to be necessary to restore specie payments is more mischievous than the reality, wisely pursued, ought to be. As soon as the apprehensions of an impending fall of values is removed, manufacturing and mechanical industries will start anew, dealers will buy for future consumption, enterprises that commend themselves to the sober judgment of investors will be undertaken, and capital, which now accepts any low rate of interest, where there is no risk, but is withheld from operations of average character, will be lent on reasonable conditions.

True remedies.

But the remedies for the evils now felt by the people in their business and industries must extend beyond any measures merely relating to the currency. They must be broader and deeper. They must begin with a prompt and large reduction in governmental expenditures and taxation, which shall leave in the hands that earn it a larger share of the result of labor. They must proceed by withdrawing, as much as possible, governmental interferences that cripple the industries of the people. They must be consummated with an increased efficiency and economy in the conduct of business and in the processes of production, and by a more rigorous frugality in private consumption. A period of self-denial will replace what has been wasted.

We must build up a new prosperity upon the old foundations of American self-government; carry back our political systems toward the ideals of their authors; make governmental institutions simple, frugal; meddling little with the private concerns of individuals, aiming at fraternity among ourselves and peace abroad, and trusting to the people to work out their own prosperity and happiness. All the elements of national growth and private felicity exist in our country in an abundance which Providence has vouchsafed to no other people. What we need to do is to rescue them from governmental folly and rapacity.

WHOLE AMOUNTS OF ISSUES EXISTING AT THE DATES SPECIFIED.

	1871. Oct. 2.	1872. Oct. 3.	1873. June 13.	1873. Sept. 12.	1873. Oct. 13.	1873. Nov. 1.	1873. Dec. 26.	1874. Oct. 2.	1875. Oct. 1.
National bank-notes	$315,519,117	$333,495,027	$338,788,504	$339,081,799	$341,582,601	$342,350,844	$341,320,256	$333,225,298	$318,350,379
State bank-notes	1,921,056	1,567,143	1,224,470	1,188,853	*1,150,000	*1,150,000	1,130,585	964,997	772,348
	Oct. 1.	Oct. 1.	May 31.	Oct. 1.	Sept. 30.	Oct. 31.	Dec. 31.	Oct. 1.	
Legal tenders and demand notes	$356,093,056	$356,086,152	$356,082,622	$356,079,742	$356,079,742	$360,952,206	$378,481,339	$382,075,407	374,010,956
Fractional currency	38,567,175	40,480,437	45,276,642	46,229,392	46,229,391	47,876,149	48,514,792	46,731,018	40,783,575
	$712,100,404	$731,628,759	$741,372,238	$742,579,786	$745,041,734	$752,329,199	$769,446,972	$762,996,720	$733,917,258

AMOUNTS HELD BY THE ISSUERS.

	Oct. 2.	Oct. 3.	June 13.	Sept. 12.	Oct. 13.	Nov. 1.	Dec. 26.	Oct. 2.	Oct. 1.
National bank-notes in banks	$14,270,951	$15,787,296	$20,394,772	$16,103,842	$18,091,961	$18,770,952	$21,403,179	$18,450,013	$18,528,837
Legal tender notes in banks	106,987,666	102,074,104	106,381,491	92,347,663	81.510,202	94,047,221	108,719,506	80,016,946	76,458,734
		Oct. 1.	May 31.	Oct. 1.	Sept. 30.	Oct. 31.	Dec. 31.	Oct. 1.	
Certificates in banks for legal tenders on special deposit in Treasury	....	$15,630,000	$29,125,000	$11,250,000	$11,250,000	$8,875,000	$36,720,000	$56,350,000	60,660,000
Legal tenders on special deposit in Treasury to redeem bank-notes	....	....	....	....	....	....	....	20,349,950	16,233,102
	Oct. 2.	Oct. 3.	June 13.	Sept. 12.	Oct. 13.	Nov. 1.	Dec. 26.	Oct. 2.	
Fractional currency in banks	$2,095,485	$2,151,748	$2,197,559	$2,302,775	$2,315,530	$2,243,027	$2,287,454	$2,224,943	2,595,631
	Oct. 1.	Oct. 1.	May 31.	Oct. 1.	Sept. 30.	Oct. 31.	Dec. 31.	Oct. 1.	
Currency in Treasury	$16,993,782	$8,499,193	$6,065,799	$3,289,032	$3,289,032	$4,312,155	$4,277,851	$16,115,840	4,790,352
Totals	$140,347,884	$144,142,341	$164,164,621	$125,293,312	$116,456,725	$128,248,355	$173,407,990	$193,507,692	$179,266,656
Amount in the hands of the public	571,752,520	587,486,418	577,207,617	617,286,474	628,585,009	624,080,844	596,038,982	569,489,028	554,650,602

* Estimated.

CLEARING HOUSE LOAN CERTIFICATES, 1873.

	Sept. 23.	Oct. 15.	Nov. 1.	Dec. 26.
Clearing House loan certificates, New York	$6,650,000	$20,560,000	$20,315,000	$2,390,000
		Oct. 13.		
Other cities	....	8,782,400	10,363,775	

NOTE.

1. In September, 1873, when the financial storm broke, the issues were, at the largest amount they had reached, ten millions more than in October, 1872, and thirty millions more than in October, 1871; and the public held thirty millions more than in 1872, and forty-six millions more than in 1871.

2. From September 12 to October 13 the issues increased two and a half millions of bank-notes; the banks lost eight and three quarter millions; the public absorbed eleven and one quarter millions of currency.

3. From October 13 to November 1 the issues were increased by five millions of legal tenders from the Treasury, one and a half of fractional currency, and by one of bank-notes, making seven and a half millions; the public lost four and a half millions; the banks gained twelve millions. The tide had turned; the outflow from the banks had continued some time after the panic; the influx had now begun.

4. From November 1 to December 26 the issues were increased by eighteen millions of legal tenders and fractionals from the Treasury. The banks gained forty-three millions of legal tenders and three millions of bank-notes; the public lost twenty-eight millions.

5. In the next nine months, to Oct. 1, 1874, the Treasury issued three and one half millions of legal tenders, and took in one and three fourths millions of fractional currency. The banks cancelled eight millions of their notes, and to cancel more deposited twenty millions of legal tenders. The currency existing, fell six and a half millions; the currency held by the public fell twenty-six and one half millions.

6. From Oct. 1, 1874, to Oct. 1, 1875, the Treasury had made no reduction of the legal tenders except to withdraw eight millions on issuing ten millions of bank-notes. The cancellation of bank-notes was twenty-five millions. The currency in the hands of the public was diminished fifteen millions.

Finally, all through this process the features have been, — First, the compulsory currency of the Government has been from time to time increased or kept stationary, except in one instance, when eight millions were withdrawn, to be replaced by ten millions of bank-notes. Secondly, the voluntary currency of bank-notes has been diminishing by voluntary cancellation. Thirdly, the principal reduction has been by the public, in refusing to use the existing currency, and leaving it to accumulate in the banks. There were seventy-four millions less held by the public Oct. 1, 1875, than Oct. 13, 1873. There were sixty-five millions more in the banks. On Oct. 1, 1875, the banks could lawfully pay out or lend sixty millions more, if it would be taken and held by the public. During all this time call-loans of bankers' balances have been at very low rates, even at the season of the year when they are generally in demand at high rates. There has been a plethora of currency and a continuous fall of prices.

XLVI.

In compliance with the recommendation of the Governor's Canal Message of 1875, a commission was created by the Legislature with power to investigate the nature and extent of the abuses denounced therein by the Governor. For the discharge of the duties of their commission the Governor selected John Bigelow, Daniel Magone, Jr., Alexander E. Orr, and John D. Van Buren, Jr. These gentlemen, who began their investigations in May and prosecuted them *de die in diem* until the close of the year, submitted reports from time to time to the Governor, and among other things recommended that proceedings should be instituted by the law officer of the State to recover large sums of money that had been, as they alleged, fraudulently paid to different contractors during the five years immediately preceding. To meet the extra labor required for the prosecution of these suits, the Governor had recommended the Legislature to make a suitable appropriation for the employment of special counsel, and for other purposes called for by the disclosures made by the commission.

At an early stage of the session of the Legislature of 1876 a resolution passed the Senate inviting the Governor to communicate to the Legislature the results thus far accomplished by the commission, with the testimony thereto pertaining. To this resolution Governor Tilden sent the following replies.

ANSWER TO A RESOLUTION OF THE SENATE — RESULTS OF THE CANAL COMMISSION.

EXECUTIVE CHAMBER, ALBANY, Jan. 18, 1876.

To the Senate.

IN answer to the resolution of the Senate requesting the Governor "at the earliest possible day, consistent with the public service, to communicate to the Legislature the results of the investigation thus far obtained by the commission, with the testimony thereto pertaining, and the titles and objects of the actions now pending, with the progress thereon made, and the names of the officials charged with complicity or connivance as aforesaid, in order that the Legislature may, in view of the information thus furnished, determine what appropriation, if any, or other measures of legislation may be necessary," I have the honor respectfully to state, —

1. That the concurrent resolution authorizing the Governor to appoint a commission to investigate canal affairs, passed in 1875, requires the said commission to report the testimony they shall take, together with such recommendations in respect to the same as they shall deem warranted by the facts, to the Governor and to the Legislature at the opening of the next session. The commission have made a series of reports to the Governor, twelve in number, on special cases, and, I understand, are preparing with all diligence a general report to the Legislature, in compliance with the concurrent resolution, which will embrace "all the results thus far obtained by the commission."

2. The several reports of the commission to the Governor have been from time to time transmitted to the office of the Attorney-General for his consideration as to what legal remedies in behalf of the State should be instituted. The conduct of such actions is devolved by law upon the Attorney-General. The present incumbent, as the Senate is doubtless aware, from the day of his taking office was engaged at the Oyer and Terminer of Erie County in the trial of one of the cases arising out of a report of the commission until a week after the adoption of your resolution. For particular information on the subject of this part of your inquiry I respectfully refer you to that officer.

In the passage of my Annual Message referred to by your resolution I expressed the opinion that the object of primary and transcendent importance in the measures connected with the administration of canals is "to reform the system and to establish every possible security against the recurrence of the evils." This object is to be attained by an exposure of the wrongs, by appropriate measures of legislation to prevent and punish similar wrongs hereafter, by the enforcement of existing laws imposing penalties upon the wrong-doers, and, as far as possible, by compelling restitution. Even in the narrow sense of pecuniary advantage to the people, infinitely more is accomplished by breaking up the system than can be hoped to be recovered in civil action. If adequate proofs could always be had, complete restitution cannot always be effected; still less full damages for wastes committed to enable the illicit profits to be gained, which are often much larger than those profits. The expenditures in jobs connected with the canals have averaged from two to three millions of dollars annually. Nearly the whole of this amount can be saved to the treasury or left in the pockets of the taxpayers without detriment to any public interest. For the present fiscal year that saving has been accomplished irrespective of any litigations in the courts. There is no reason why the same saving should not be effected hereafter.

The indictment, trial, and conviction of persons who have committed criminal offences under existing laws have for their object the general purpose of remedial justice by deterring in the future from the commission of similar offences. Civil actions by the State, while they have an incidental effect of the same nature, have the further and main object of compelling restitution of the public money unlawfully taken. Indictments, since the law of 1873, can be found at any time within five years of the time of the commission of the offence. Civil actions by the State for the recovery of money in such cases can under the laws of 1875 be brought at any time within ten years after the cause of action occurred.

The investigations of the commission, faithful and laborious as they have been, leave unexplored far more than has been brought to light. Official bodies like the Canal Board and the Commissioners of the Canal Fund ought to be clothed, as permanent standing authorities, with full powers of investigation, in their respective spheres, as to all wrongs done in respect to public moneys or property. The Comptroller, as the general fiscal representative of the State, and perhaps other public officers, ought to be vested with similar powers.

It is quite manifest that it would overtask the powers of any one man to conduct the criminal and civil actions that have been and ought to be instituted for these objects. Vast sums stolen from the treasury will be, as in similar cases they have been, employed in securing extraordinary service in legal ability, in professional experts, and in indefatigable activity to defend, by every technical artifice, the unjust possession. There is no force of detectives connected with the office of the Attorney-General, neither are the district attorneys his subordinates. The Attorney-General of the United States, on the other hand, has all the district attorneys and all the marshals and deputy-marshals, besides a large number of skilled experts, perfectly at his command; and Congress every year makes a sufficient appropriation to meet whatever expenses may be necessary in the preparation of suits for trial.

The actions growing out of canal frauds involve the examination of complicated facts relating to construction, and the quality and utility and value of the work; and they cannot be properly prepared or tried without the assistance of experts. It has been usual to make a small annual appropriation to enable the Attorney-General to employ counsel to assist him in the discharge of his official duties. The suggestion in my Annual Message that the ordinary appropriation would be insufficient, but that a "special" appropriation would be necessary to enable him to enforce the rights of the State and to meet the just expectations of the people, had reference to the expenses necessary for preparing these suits for trial and for conducting these trials.

XLVII.

ADDITIONAL RESULTS OF CANAL INVESTIGATION.

Executive Chamber, Albany, March 24, 1876.

To the Legislature.

The results of the investigations ordered at the last session into the work on the Erie and other canals purporting to be improvements and known in the language of our legislation as "extraordinary repairs," have been submitted to you. They establish these conclusions: —

1. The expenditures for these purposes during the last five years were, directly, about $11,000,000, and indirectly about $3,000,000, making $14,000,000; and involved taxation amounting to nearly $15,000,000. This is in addition to vast sums expended in former years.

2. The mass of the work for which these expenditures were made was of no real utility to the public. The waste in construction, which furnished jobs to contractors, but was of no value to the State, has been even larger than the illicit and fraudulent gains.

3. Most of the contracts were obtained by the system of unbalanced bids and other dishonest devices.

4. Much of the work was executed in violation of the contracts, and is worthless.

The advantages to the State of the investigations have not been limited to the discovery of the particular frauds; nor even to the destruction of a system involving a vast annual loss to the taxpayers, demoralizing to the public service, and corrupting to all governmental life.

Incidentally, in arresting these practices, a fund has been rescued from spoliation out of which a real, important, and valuable improvement can be effected in the main trunks of the canals. On the first of last month there remained, as nearly as I can ascertain, of the funds applicable to extraordinary repairs and new work, —

Unappropriated to specific objects		$633,000
Existing appropriations for objects not under contracts		360,000
Estimated as necessary to settle existing contracts, —		
Erie Canal	$347,000	
Champlain Canal . . .	30,000	
Oneida Lake Canal . .	6,000	
	$383,000	
Balance after selling contracts as proposed		300,000
Sum available for new work on Champlain Canal-enlargement		270,000
Oneida Lake		41,000
		$1,604,000

I respectfully recommend the enactment of laws providing for the following measures: —

1. Empowering and directing the Canal Board to close all existing contracts for extraordinary repairs, except in those special cases where, in the judgment of the Board, it cannot be done without detriment to the interests of the State, and repealing all existing appropriations for extraordinary repairs.

2. Appropriating not exceeding $400,000 to such payments as may be just and necessary to close existing contracts, but providing that no such appropriation shall become effectual in respect to payments on any contract until the same shall be certified by the State engineer in writing to the Canal Board, and afterward duly approved by the Canal Board; and providing further that nothing in any such act of appropriation shall operate or be construed to validate or recognize any contract tainted with illegality or fraud, or to waive any defence of the State in respect to any contract or any right of

action in the State growing out of such contract, or of work done or required by the same; and likewise appropriating not exceeding $100,000 for the purpose of protecting or finishing such work as, in the judgment of the Canal Board, the interests of the State may require to be so protected or finished.

3. Appropriating not exceeding $400,000, to be expended, with the approval of the State engineer and under the direction of the Canal Board, in the improvement of the water-way of the Erie Canal, with a view of giving full seven feet depth of water so far as may be practicable at the opening of navigation in the present year; appropriating not exceeding $15,000 for a survey and measurement of the water-way of the Erie Canal for the purpose of determining its real condition and the places where it specially requires improvement; and appropriating from the residue of funds hitherto applicable to extraordinary repairs on the Erie Canal, which are now or may come into the treasury, including moneys which may be withheld by the State on existing contracts or recovered by the State in respect to such contracts or work under them, such sums as may be necessary to improve the water-way of the Erie Canal to a depth of seven and a half or eight feet at such places as may be found most useful or most economical.

4. Appropriating such portion of the unexpended balance of former appropriations for the Champlain Canal as may be necessary to improve the water-way of that canal.

5. Directing the Canal Board, at the beginning of the next session of the Legislature, to report what, if any, specific improvements, other than that heretofore mentioned, are essential to the interests of the State.

The advantages of improving the water-way of the Erie Canal were discussed by me in the Annual Message of 1875, and again in the Annual Message of 1876. In the Special Message of March 19, 1875, while showing the enormous outlay on the canals for alleged improvements, questioning the

utility of most of the new construction, exposing the fraudulent devices by which the contracts were obtained, and inviting investigation as to the quality of the work, I still insisted on the immense benefits, at comparatively small cost, of improving the water-way, in the following language: —

"In my judgment a far more important improvement of the Erie Canal would be effected by a thorough system of ordinary repairs which should give the water-way its proper and lawful dimensions, and by progressively deepening it, wherever reasonably practicable, from seven to eight feet. As the object would be merely to enable the submerged section of the boat to move in a larger area of water, so that the displaced fluid could pass the boat in a larger space, it would not be necessary to alter the culverts or other structures, or to carry the walls of the canal below the present bottom; and the benefit would be realized in each portion of the canal improved, without reference to any other part of the channel which should remain unchanged. In facilitating the movement of the boat and quickening its speed, it would increase the amount of service rendered in a given time, and would thereby diminish every element of the cost of transportation. It would benefit the boatmen and carriers more, even, than one cent a bushel remission of tolls. It would be of more real utility to navigation than five or ten times its cost expended in the average manner of so-called improvements on the public works. But it is too simple, too practically useful, to enlist the imagination of projectors who seek the fame of magnificent constructions, and of engineers who build monuments for exhibition to their rivals, or to awaken the rapacity of cormorants who fatten on jobs.

"I renew the recommendation of my Annual Message upon this subject; and would draw particular attention to this clause, — that provisions be made by law to enable the State engineer, soon after navigation is opened, to measure the depth of water in the canal by cross-sections as often as every four rods of its length, and on the upper and lower mitre-sill of each lock."

These opinions are deduced from the best engineering science as applied to canal navigation, and are confirmed by practical experience. In the present depressed state of business are found an increased necessity and a favorable opportunity for going on with this measure. The interests of the consumers in cheap navigation, of the boatmen and forwarders for every facility

in their business, the low prices of materials, and the scanty employment of labor, are all circumstances which conspire to demand attention to this subject, and to make the present a fit and advantageous time in which to begin the work ; and I do now earnestly ask your consideration of these recommendations, which I regard as of high public importance.

I avail myself of this opportunity to renew the recommendation recently submitted to you, that a law be passed conferring on the Canal Board full powers of investigation and redress of all wrongs done to the State in respect to canal work. It seems to me quite clear that such powers ought to be vested in that body, and in every similar body, irrespective of the particular occasion.

I likewise renew the recommendation of an ample appropriation in aid of the defences of the State against fraudulent or unjust canal contracts, and in aid of civil and criminal actions, in behalf of the State, growing out of canal frauds. It is impossible properly to prepare such cases for trial without larger expenses than the State has hitherto been accustomed to make. The machinery of the State for such legal controversies is very inadequate and ineffective compared with that of the United States Government or any other government, and needs to be supplemented by accessory measures. In recent instances we have seen rich and powerful public delinquents in the courts defending their possession of plunder and their personal liberty by very numerous counsel, stimulated by enormous fees, exceeding many times ordinary professional compensations. The effect is to demand extraordinary sacrifices of time and effort on the part of those who represent the people ; to render the litigations extremely engrossing and burdensome. The State will not imitate the practice of an extraordinary rate of professional compensation ; but not to foresee and to provide for attention, effort, and aids commensurate with the necessity, would be practically to abandon the assertion of the rights and the protection of the interests of the people against the wrongdoers.

XLVIII.

THE COMMISSION OF EMIGRATION.

EXECUTIVE CHAMBER, Albany, April 12, 1876.

To the Legislature.

I TRANSMIT herewith a communication from the Commissioners of Emigration, to which I earnestly invoke your immediate and considerate attention. You are doubtless aware that on the 20th of March last a decision was rendered by the Supreme Court of the United States in the case of Hendersons *vs.* The Mayor, etc., of the City of New York and the Commissioners of Emigration, declaring unconstitutional and void the law of this State requiring a bond from the parties bringing emigrants into the port of New York to indemnify each city, county, and town of this State against such emigrants being a charge on them during the period of five years from the date of their arrival, but allowing a commutation of the liability under such bond now fixed by law at the sum of one dollar and a half for each emigrant.

The effect of this decision is totally and instantly to destroy the whole income of the commission, by means of which their beneficent operations have been hitherto carried on. The system is completely arrested, and for some weeks the commissioners have had no revenue whatever, and the means within their control will be exhausted by the 1st day of May.

The system was put in operation on the 6th day of May, 1847, under an Act passed the day before, and has been continued under subsequent amendments until the present time. In

the Report of the commissioners to the Legislature, submitted on the 31st of January last, they state their operations, during the period of their existence, as follows: —

"It [the commission] has during this period supervised the landing of over six millions of emigrant passengers with their baggage; it has provided and cared for 1,717,838 of alien emigrants for a greater or less period during the first five years subsequent to their arrival; it has treated and cared for 547,209 in its various hospitals, etc.; it has supplied 485,669 with temporary board, lodging, or pecuniary assistance; it has provided 400,187 with employment, through the labor bureau at Castle Garden; it has forwarded to inland destinations and returned to Europe, at their own request, 58,122; it has relieved and provided for 226,651 in various counties and institutions of the State. Under this head the sum of $1,411,474 has been reimbursed by the commission to various counties and charitable institutions."

The commissioners have also cared for, in its various asylums, and sent back at its own expense to their native lands, many who have passed through this to other States, possessed of health and supplied with money, which they subsequently lost, and returned to this State to become a charge upon the commission. It has cured many cases of sickness of emigrants destined to other States, and then despatched them to their various designations to enrich other communities with their money, capital, and labor, value unimpaired.

The arrivals in the port of New York probably constitute at least 80 per cent of the total addition to the population of the United States by emigration, including the influx through Canada. The value of this accession to our population as a productive power is not to be measured by mere numbers. In an investigation which I had occasion to make some years ago it was ascertained that while the males between the ages of fifteen and forty in the resident population of the United States in 1860 were 21½ per cent of the whole number, the males between the same ages among the emigrants arriving during forty years were 41½ per cent of the whole number. If the total influx during the twenty-nine years has been seven and a half

millions, it has included the virile portion of a population of eighteen millions; that is, persons of the ages which are nearly coincident with those usually accepted as embracing the period of military service, and are also those of the largest capacity for physical labor. The chief sources of emigration have been Germany and Ireland, forming about two thirds of the whole influx. In the earlier portion of the period the Irish emigration was much the largest; in the later portion the German has been much the largest; in the whole period the German has been about one hundred thousand the larger. In 1856 the commission kept an account of the average cash brought by the emigrants, and it amounted to $68.08 per head, which is deemed a low estimate of the real amount.

This migration is the most remarkable which has happened in the history of the human race. It has enacted an immense part in the growth of our population, — the creation of great cities; the settlement of new States; the formation of the business of our railroads; the extension of all commerce and all industries; as well as in all the great national events of which our country has been the theatre. The benefits of this vast migration have been diffused all over the northern portions of the Republic. Less than 45 per cent of the emigrants remain within this State, even for the first year from their arrival; and after that a much smaller proportion. But of course the tendency is for a large portion of those who become the objects of public charity to fall upon the City and State of New York. And the still more important function of protecting the emigrants from extortion, deception, and the innumerable variety of wrongs to which they are inevitably exposed, can only be performed by a machinery such as has been furnished by the laws of this State, which must be local in its operations, and can be most wisely and beneficially supplied by local and State authorities.

In the practical conjuncture which now exists, it seems to me necessary that the State should interfere and advance the necessary funds to carry on the operations of the commissioners for

a year to come, unless in the mean time relief can be obtained by Congressional legislation. The value of the property which has been acquired by revenues derived from the commutation money is far in excess of the necessary advances, and the title to that property is in the State. On the other hand, the faith of the State is fairly bound to continue its care of such emigrants as arrived previous to the abrogation of the system for five years after their arrival. The State, holding the property of which it has the title, will acknowledge it as a trust, and may properly look to it for a reimbursement of such advances as are required by the present extraordinary emergency. The decision of the Supreme Court of the United States may also involve the necessity of new or supplementary legislation for the protection of emigrants on their arrival, — to which branch of the subject of emigration I also invite your attention.

XLIX.

VETO-MESSAGES.

Executive Chamber, Albany, March 14, 1876.

To the Assembly.

I herewith return, without my signature, Assembly Bill No. 12, entitled, "An Act to provide for the employment of Convicts and Paupers under the control of the Commissioners of Public Charities and Correction of the City and County of New York."

This Bill commands the Commissioners of Charities and Correction for the City of New York to furnish employment to "every able-bodied convict or pauper confined in the institutions under their care" who cannot be employed "to advantage or profit" in getting out stone, cultivating ground, or manufacturing for the use of the said departments, with such mechanical or other labor as "will yield the greatest revenue to the departments," and enable him to be kept constantly employed during the term of his imprisonment.

This provision does not merely confer authority on the commissioners. It is mandatory; it contains no qualification; it allows no discretion. The rule in respect to the choice of industries in which the convicts and paupers are to be employed is absolute. The work to be carried on is that which will "yield the greatest revenue." The theoretical principle of political economy in respect to private business, which, to the honor of humanity, is qualified and tempered in practice, — remorseless competition for the greatest profit, — is enacted as the law in the selection of the industries to be followed. Unless

the legal effect of this enactment is qualified by the last clause of the same section, any intentional deviation, any conscious deviation from this rule by the commissioners would be itself a misdemeanor; it would expose the commissioners to a liability to take their places with the convict portion of the persons under their care.

It is true that an amendment was added to this section by the Senate, making it also the duty of the commissioners, "so far as in their judgment" may be "practically and advantageously" done, to take those industries and such a diversity of them as may "tend least to conflict with the interest of free industries and trades in the said city and county." Under the established principle of construing the parts of a statute so that they will all stand together, it is probable that this clause would be ineffectual to modify the operation of the rule laid down in the former part of the section. Even the authority to prefer the industries which "tend least to conflict" is limited to cases in which it may be "advantageously" done. Could it be deemed "advantageous" to choose industries which would yield less profit than others? Nor does this provision apply in favor of the industries of Brooklyn or any other part of the State than the city of New York. The chief significance of this clause is its apparent expression of distrust by the Legislature, and of a disposition to qualify the main provision of the section.

The Second Section of the Bill appears to be intended to enlarge the powers of the commissioners to embark in manufacturing on account of the city corporation, which is itself a questionable experiment in view of the results of all business enterprises heretofore undertaken by the public authorities, and is only to be sanctioned after the greatest consideration and with the most careful guards against the mischiefs which have been engendered in similar cases.

Other provisions of the Bill are imperfect, uncertain, and improvident. For instance, the clause prohibiting the commissioners from entering into any "contract by which they

shall in any manner relinquish the control, support, and discipline of the said paupers and convicts," — though probably not intended to have such an effect, — may conflict with the humane provisions of the Act of last year "for the better care of pauper and destitute children."

It is desirable to make the prisons and almshouses of the city of New York contribute as much to their own support as they can, consistently with their objects and with the welfare of all classes of our citizens; and no doubt the occupation of their inmates in work tends to discipline, to health, and to reformation. The problem is how to attain these salutary ends without injuring the interests or wounding the just self-esteem or the honorable sentiments of the skilled artisans and working-men who are the strength of a State, who have made American labor on the whole more efficient than any other in the processes of production, and who have conferred on our country the renown of its achievements. The best solution of this problem is worthy of the most patient and considerate thought and of continuous effort. A constitutional amendment changing the system of administration of the State prisons passed both Houses last year, and is now pending. The State Board of Charities are addressing their best faculties to their beneficent work. A special investigation of the subject of pauperism was recommended in my Annual Message, and is under your consideration. In the present depressed state of business, when scarcely any industry is remunerative, even with the advantages of being long established, and of having private supervision and management, it is not likely that any new business enterprise or speculation carried on by the public officers would have immediate results in profits to the treasury.

Nor is it to be overlooked that unexampled distress from the want of remunerative employment now exists among the mechanics and working-men of the city of New York. If Government may maintain an organized system of relief for paupers, it may at least exercise forbearance, in a period of business disaster, toward those who are struggling with difficulties that

tend to swell the class to which such relief is given. It can abstain, not only from actual injury, but from holding up to their imagination the spectre of a new governmental competition; from rash or experimental changes in the system and laws to which the people are accustomed; from inconsiderate or imperfect measures, the effects of which cannot be foreseen or completely understood. In the mean time a real and vast reduction of the burden of taxation can be secured in other methods, for the support of which all classes and interest may be expected to co-operate. The reform of the canal expenditures of itself will save more than a million of dollars a year to the taxpayers of the metropolis. That measure is an example of a liberal policy toward the boatmen and transporters in a reduction of tolls made coincidently with a far larger remission of taxes, and a harmonious co-operation of both classes to secure the reform. The policy which I had the honor to recommend to the Legislature in my Message at the opening of the present session, if adopted and faithfully carried out, will secure to the taxpayers of the city of New York a remission of taxes in 1876, as compared with 1874, of four millions of dollars, or about one half of the entire taxes of the city for State purposes. In such prospects of being themselves relieved, and in such necessity of general co-operation, the taxpayers of a community like the city of New York cannot afford to turn only the sacrificial side of public retrenchments to the mechanics and working-men who really bear in indirect forms their full share of the taxes, but who, because they do not pay directly, too often fail to recognize the full benefits to themselves of the policy which reduces such burdens.

EXECUTIVE CHAMBER, ALBANY, May 1st, 1876.

To the Assembly:

Assembly Bill No. 301, entitled, "An Act making Appropriations for certain expenses of the Government, and supplying deficiencies in former Appropriations." I object to the following items in this Bill: —

(1) "The sum of $20,259, being the balance remaining in the treasury of the sum of $30,000 appropriated by Chapter 760 of the Laws of 1873 for removing obstructions in the outlet of Cayuga Lake and the channel of Seneca River, is hereby appropriated to pay the Merchants' National Bank of Syracuse for the drafts on the Comptroller held by said bank and drawn by the Canal Commissioner for the middle division, in payment for work contemplated and directed by said original appropriation."

(2) "For the payment of drafts drawn by the Canal Commissioner upon the Comptroller for the balance due on the final account, on file in the office of the Auditor, for work done for removing obstructions from the outlet of Cayuga Lake and the channel of Seneca River, the sum of $2,386.48, or as much thereof as the Auditor and Comptroller shall ascertain to be due thereon."

The first of these two items reappropriates, and the second provides for a deficiency in the appropriation to meet the final estimate on a work which has been from the beginning redolent with imprudence and fraud. There are no facts proved which can justify these claims. On examining the affidavit of the engineer verifying the final account, it appears that the statement that the work is completed is qualified by the insertion of the words "as far as directed." This interlineation totally destroys the effect of the statement. It is obviously in a different handwriting and a different ink from the rest of the affidavit.

The statute (Chapter 304 of Laws of 1868, p. 631) which authorized the work provided that no contract should be made except for the completion of the work. This provision has been disregarded. It would seem that the proposed appropriation is an attempt to obtain final payment in violation of the law.

(3) "For the Onondaga Salt Springs, to reimburse the fund appropriated in the Annual Appropriation Bill of 1875 for the current expenses of the works, which had been expended by the Superintendent in order to bring into use new wells, and for machinery for working the same, the sum of $10,269."

The general appropriations ought to be ample for every legitimate purpose, especially with the diminishing business of the springs.

(4) "Together with the sum of $183,890.05 (being the unappropriated remainder of the tax levied for the same object for the fiscal year commencing on the 1st of October, 1875)." New capitol.

For the first time within my observation the appropriation for the new capitol is not encumbered by arrears, which largely consume the appropriation before it is made. The $800,000 will provide for considerably more than was done last year, considering the immaturity and uncertainty of the plans for the completion of the work and the delay thus far to ascertain with certainty its cost, which has been enjoined by several statutes. It is quite clear that the sum of $800,000 should be preferred to the sum of $983,890.05. The balance is the product of the increased valuation above the sum on which the appropriation of last year was computed. It is now in the treasury, and lawfully applicable to general purposes. It should remain there to provide for appropriations and to lessen taxes.

It is commendable in the Legislature that it has completed and submitted for the action of the Governor the General Appropriation Bill and the Supply Bill before the close of the session. It has thus preserved the revisory power of the Senate and Assembly, as designed by the Constitution. But this advantage, attained so late in the session, has some incidental inconveniences. General observations.

The period for the examination of the Appropriation Bill expired on the Saturday, and the period for the examination of the Supply Bill will expire on the Monday preceding the Wednesday fixed for the final adjournment of the Legislature. The ten days allowed for the action of the Governor are at a time when every moment is filled by attention to numerous other bills and to the communications from members and others to which these bills give occasion, and when the general business accumulates to its highest pressure. The Appropriation Bill contains 163 specific sums of money and 350 distinct objects to which they are applicable. The Supply Bill contains 223 specific sums of money applicable to 425 distinct objects.

To analyze these bills, to ascertain their relations to the taxes proposed to be levied, to keep the appropriations within the means of the treasury, so that a floating debt will not arise in disobedience to the Constitution, bringing with it embarrassments to the fiscal operations of the State, and so that the sinking funds will not be invaded, is of itself an important duty. In examining so many items, many of them complex, and many of them requiring much investigation of facts in order to determine their character and expediency, it cannot but be that some of them cannot be made the subject of a fresh inquiry by the Governor adequate to discover and adjudge their real merits, but must stand on the authority of the committees and the Legislature if no ground for rejecting them is apparent.

I have the satisfaction of thinking that on the whole these bills are less subject to objection than any former ones within my observation; that with the items struck out by me the expenditures will be within the means provided; that while some appropriations are larger than is desirable, and the Governor has no power to reduce them, the aggregate result, if the items struck out be omitted, will enable the tax-bills now pending to be conformed substantially to the scheme suggested in my Annual Message, provided the surplus of $475,000 tax for last year, caused by the enlarged valuation, be appropriated to the Bounty Debt, and the deficiency in the Canal Sinking Fund be provided for. Without a new tax, as I understand is intended by the Canal Committee of the Assembly, the items hereinbefore specified are objected to.

The other portions of the Bill approved, May 1, 1876.

MEMORANDA FILED WITH CERTAIN BILLS IN THE OFFICE OF THE SECRETARY OF STATE.

Assembly Bill No. 274, *entitled,* "*An Act to authorize a Tax of three tenths of a mill per dollar of valuation to provide for deficiency in the Sinking Fund under Section* 3 *of Article VII. of the Constitution.*"

Not approved.

This Bill authorizes a tax of three tenths of one mill to meet the deficiencies in the Canal Sinking Fund in obedience to Section 3 of Article VII. of the Constitution. The valuation, as nearly as can now be ascertained from the reports of the assessors in the Comptroller's office, is $2,390,803,696. The produce of this tax, computed on that valuation, would be $717,241.

This Bill came into the Executive Chamber on the 27th day of April. It is rendered unnecessary by a subsequent Act, which came into the Executive Chamber on the 4th of May, — the day after the adjournment, — and which provides for paying these deficiencies without a tax. This latter Bill, in accordance with my Special Message of March 24th, 1876, in relation to the canals, provides for the completion or cancellation of pending contracts for extraordinary repairs and for the application of $1,600,000 of money yet unexpended which had been reclaimed from the folly, waste, and fraud incident to those expenditures.

It contained two appropriations for real improvements to the Erie Canal. The one was $400,000 for bottoming it out and restoring it to the lawful depth of seven feet; the other was the subsequent use of $800,000 to go on with like improvements in the water-way, which would facilitate and quicken the

transit of the boat by deepening the volume of the water through which it should move on the levels. No doubt a measure so practical, so simple and economical would lessen the cost of transportation, and would be of more real service to the navigation than ten millions expended in the usual manner.

At the very close of the session the Chairman of the Canal Committee of the Assembly, who had supported such improvements on the Erie Canal as well as on the Champlain, came to me with the information that the latter appropriation of $800,000 for the Erie would fail in the Senate, which had manifested opposition to these measures. The next best use of the rescued moneys seemed to be to pay debts and remit taxes. An amendment was prepared making that change. It was adopted fifteen minutes before the close of the legislative session. I have signed that Bill, and now reject this.

Taxes for 1874 and 1876.

The taxes for the year 1874 were $7\frac{1}{4}$ mills on a valuation of $2,169,307,873. They amounted to $15,727,482. The taxes for 1876 will be $3\frac{11}{24}$ mills on a valuation likely to be, as nearly as can now be ascertained, $2,390,803,696. That would produce $8,268,196. This result approximates to the ideal proposed in my last Annual Message, of reducing the taxes for 1876 to one half those of 1874. It has been worked out, notwithstanding an increase of $276,869 in the tax for schools, caused by an increase of valuation applied to a system which makes the assessors the real arbiters of the amount of the tax, and which has increased it a million in the last few years. And also, notwithstanding $200,000 is included for the commissioners of emigration, which is in effect a loan.

DEBTS PAID IN 1874 AND 1876.

In 1874 the appropriations for sinking funds were : —

Bounty Debt Sinking Fund	$4,260,000
Canal Floating Debt Sinking Fund	198,888
Total in 1874	$4,458,888

In 1876 the appropriations to the Bounty Debt Sinking Fund were: —

Proceeds of one third mill tax . . .	$796,934	
Surplus of tax last year unappropriated till now	475,560	
Premium actually realized thus far by Mr. Robinson's conversions . . .	750,207	
		$2,022,701

The appropriations for the Canal Debt Sinking Fund were: —

From moneys reclaimed from Extraordinary Repair Fund for principal . . .	$630,325	
For interest	93,032	
		723,357
Total in 1876		$2,746,058
Less applied to sinking funds in 1876 than in 1874 .		1,712,830

In round sums, a million and three quarters less has been absorbed into the sinking funds in 1876 than in 1874; but of the two millions and three quarters which have been or are to be so absorbed in 1876, two millions come from savings and economies, and the tax for the sinking fund in 1876 is thereby reduced to three quarters of one million.

Items of savings.

Of this two millions of savings, the item of $475,000, carried over from the taxes of last year and now first appropriated, and the item of $723,000, now rescued from the extraordinary canal wastes, have been explained. The other item, $750,000 of realized premiums, remains to be explained.

In the Report of Comptroller Hopkins, dated Jan. 4, 1876, it was estimated that the balance of interest to be paid by the Bounty Debt Sinking Fund over that to be received by it would be $893,767; but that the premium on the securities held by the sinking fund would amount to $1,200,000, and a surplus over the balance of interest would remain, amounting to $306,233. These premiums were nearly all on long stocks of

the State and United States payable in gold. On the resumption of specie payments, or the approach of that result, or a general public expectation of it, most of those premiums would vanish. A loss of one quarter of them would extinguish all the surplus beyond the adverse balance of the interest account. Successful financiering in private or public affairs depends largely upon the disposition to seize the opportune moment for converting favorable possibilities into certainties. I ventured in the last Annual Message to suggest the application of the sinking fund to the payment of the debts.

This suggestion and the more explicit reasons now disclosed would probably have gone for nothing if Mr. Comptroller Robinson had not come into the charge of the State finances. His own notions of sound finance dictated a policy which he has, as far as has been practicable, executed with rare sagacity, judgment, and skill. In four months he has bought in $4,625,900 of the Bounty Debt by exchanges and by conversions of assets and purchase of State liabilities. He has realized $750,207 of these premiums, being $255,631 in excess of the estimated value of the assets converted, after deducting the premiums on the debts bought in.

Sources of economies causing the reduction of taxes.

The whole saving in 1876 as compared with 1874, allowing for the excess of the appropriation for schools of $276,869, and the loan of $200,000 to the commissioners of emigration, is $7,936,155. Of that sum $1,712,830 is in the diminished payments on debts. All the residue, $6,223,325, is in real economies.

Savings.

The application of savings from former taxes and from the expenditures for which they were levied in the particulars mentioned, furnishes $1,949,124. The diminution of certain canal expenditures furnishes $2,372,680. The taxes for these purposes were, —

	In 1874.	In 1876.
Extraordinary repairs	$1,898,144	None.
Awards and outlays in excess of appropriations	474,536	None.
Saving	$2,372,680	

General expenses (including capitol and asylums and reformatories, and excluding increase of tax for schools and advances to emigrant commission) : — General expenses.

1874	$6,087,620
1876	4,005,887
Saving	$2,081,733

RECAPITULATION.

Saving applied	$1,949,124
Canal retrenchments	2,372,680
General retrenchments	2,081,733
Total	$6,403,537

It thus appears that nearly 80 per cent of the reduction of eight millions in State taxes was directly produced by these economies.

Expenses paid out of the revenues and funds of the State, though they do not in the first instance affect the taxes, ultimately come to that result when they have to be replaced. They are therefore equally worthy of attention. Other retrenchments.

ORDINARY CANAL REPAIRS.

	1874.	1876.	Saving.
Current	$1,424,510	$1,120,600	$303,910
Deficiencies	250,000	156,879	93,121
Total saving			$397,031

REAPPROPRIATIONS.

These are paid out of cash in the treasury : —

1874	$917,379
1876	None
Saving	$917,379

Reclamations.

The reclamations of moneys in the treasury from unexpended appropriations for extraordinary repairs amount to $1,604,000. A considerable sum in addition may be expected.

REDUCTIONS IN 1875 AS COMPARED WITH 1874.

Extraordinary repairs	$1,898,144
Ordinary repairs	415,360
Awards and outlays in excess of appropriations	40,674
Reappropriations	577,240
	$2,931,418

REDUCTIONS IN 1876 AS COMPARED WITH 1874.

Extraordinary repairs	$1,898,144
Ordinary repairs	397,031
Awards and outlays in excess of appropriations	474,536
Reappropriations	917,379
	$3,687,090

This is besides the reclamation of money realized to the extent of $1,600,000, and is likely to reach two millions.

In the mean time no interest of the State has been injured or neglected. The appropriation for the new capitol for the present year of $800,000 will yield more means to pay for new work than the usual appropriation of $1,000,000; for the fresh construction will start without any of the arrears which have heretofore encumbered its progress. The appropriation of nearly $500,000 for continuing the construction of asylums and reformatories is made more effective by being carefully applied to the completion of specific portions to be brought into use.

The people may have the satisfaction of feeling that while half of their State taxes are remitted, — $8,000,000 out of $16,000,000, — it is accomplished without improvidence of the future or temporary retrenchment which cannot be maintained, and that the appropriations have been kept clearly within the means provided by the taxes levied, so that no temporary floating debt will be created or invasion of the sinking funds

made, as has often and to a large extent happened hitherto, in disobedience to the express commands of the Constitution, and in violation of the whole scheme and policy of that instrument in respect to the State finances.

Assembly Bill No. 493, *entitled*, "*An Act to provide for the completion or cancellation of all pending contracts for new work upon and extraordinary repairs of the Canals; and making an Appropriation to pay the expenses of such necessary extraordinary repairs as may be approved of and directed by the Canal Board.*"

MEMORANDUM. — I object to items contained in Section 4 of this Bill, which are as follows: —

"For the construction of a lift-bridge over the Erie Canal at Main Street, in the village of Brockport, the sum of forty-five hundred dollars, or so much thereof as may be necessary, provided that the present bridge be taken down and removed to Palmyra and erected over the Erie Canal between Kent and Earl streets."

"For the construction of a lift-bridge over the Erie Canal at Brighton, Monroe County, to replace the iron bridge now existing there, the sum of forty-five hundred dollars, or so much thereof as may be necessary."

"For the construction of a swing, hoist, or turn-table bridge over the Oswego Canal in the city of Syracuse, on Salina Street, at its intersection with Bridge Street, in place of the present bridge, and in accordance with the provisions of Chapter 382 of the Laws of 1874, the sum of fourteen thousand dollars, or so much thereof as may be necessary."

"For the construction of a lift-bridge over the Erie Canal at Genesee Street, in West Troy, to replace the iron bridge now existing, the sum of forty-five hundred dollars, or so much thereof as may be necessary."

"For building a lift-bridge over the Erie Canal at Exchange Street, in the city of Lockport, in the county of Niagara, the sum of five thousand dollars, or so much thereof as may be necessary."

"For reconstruction of an iron bridge over the Erie Canal between Earl and Kent streets, in the village of Palmyra, the sum of eight hundred dollars, or so much thereof as may be necessary."

As to these items, the State Engineer reports to me as follows : —

"Lift, hoist, or swing bridges.

"1. Their first cost and cost of repairs are much greater than for ordinary bridges.

"2. Navigation is liable to interruption from want of promptness in their management.

"3. They are special, local improvements, not necessary to secure good navigation, which the localities specially benefited should pay for and maintain, if built at all."

Mr. Cole, chairman of the Canal Committee of the Senate, called my attention to the fact that in some of these cases no law has been passed authorizing the construction for which the appropriations are made, and stated to me that he had assented to the Bill for the valuable provisions it contains, assuming that these items would not receive the Executive sanction. In the Memorandum on the Appropriation Bill for 1875 for extraordinary repairs the following observations were made : —

"If changes in the structure of bridges are to be made, they should be done upon a systematic plan, duly considered by the Canal Board, with the approval of the State engineer, and an examination of the particular case should be had to decide whether the proposed change is clearly necessary for public purposes.

"The tendency to change the innumerable bridges over the canal, at the instance of private persons and local influences, to conform to a prevailing fashion, the contagion of which passes from one bridge to another — in the absence of any resisting power in behalf of the State, which finally pays the cost of the change — is a serious and growing evil. The applications for swing-bridges — tearing down the existing bridges — are becoming frequent. They are demanded by some individual, corporate, or local advantage, real or imaginary. They are usually in places which have been already largely benefited by the construction of the canal. They impose on the State a large extra cost, and charge it with an annual expense for operating each one equal to the interest on about twenty-five thousand dollars. There are 1,318 bridges over the canals, and the erection and operation on this plan of one sixth of this number would probably cost the State as much as the original outlay for the Erie Canal. The fashion is full of danger."

I object also to the following items contained in Section 4 of this Bill: —

"For rebuilding the bridge over the Erie Canal on Main Street, in the village of Fultonville, the sum of three thousand dollars, or so much thereof as may be necessary."

"For rebuilding bridges over the State ditch on Main and Delaware streets, in the village of Tonawanda, and for building a bridge over said ditch on Fletcher Street, the sum of two thousand dollars, or so much thereof as may be necessary."

"For building a farm bridge over the Champlain Canal, on the farm of Jerry Brown, in the town of Whitehall, the sum of six hundred dollars, or so much thereof as may be necessary."

"For the completion of the bridge over the Glens Falls feeder, east of and near Green & Richard's steam-mill, the sum of eight hundred dollars, or so much thereof as may be necessary."

"For the construction of three bridges over the State ditch in the village of Tonawanda, in Niagara County, at Marion Street, Oliver Street, and Van Vort Street, the sum of two thousand dollars, or so much thereof as may be necessary."

"For the construction of a foot-bridge over the Erie Canal at Mud Lock, at the junction of the Cayuga and Seneca Canal, the sum of five hundred dollars, or so much thereof as may be necessary."

"For the construction of an iron bridge over the Erie Canal at the south end of Prospect Street in the city of Lockport, the sum of three thousand dollars, or so much thereof as may be necessary."

"For repairing and reconstructing the docking on the Main and Hamburg Canal, in front of Hubbell Brothers' foundry in the city of Buffalo, the sum of two thousand dollars, or so much thereof as may be necessary."

"For the construction of approaches to the bridge over the Erie Canal at Averill Street in the city of Rochester, twenty-five hundred dollars, or so much thereof as may be necessary."

"For continuing the work on the breakwater in the harbor of Buffalo known as the Bird Island pier, including the amount already owing and to be paid by the State, the sum of thirty thousand dollars."

If these items or any of them shall be found proper and necessary, ample provision is made for them in Section 3 of this Act. It will be within the authority of the Canal Board, under

that section and other provisions of law, to do this work if, in their judgment, the interests of the State or its obligations toward individuals or localities should so require; and adequate appropriations exist to carry out their decisions.

I object also to an item in Section 4, which is as follows:

"For the payment of interest to E. H. French or his assigns on an amount as adjusted by the Canal Board under Chapter 879 of the Laws of 1871, and also under Chapter 850 of the Laws of 1872, the sum of $1,748.22."

This appears to be an appropriation for a gratuitous payment of interest on a sum which was a mere extra allowance to the contractor, and which purported to be in itself a final adjustment. By the first Act the Canal Board was authorized to award to E. H. French such sum as they may find him entitled to, "if said Board shall find that said work was not embraced in the special notice of letting under which he entered into a contract with the State, nor contemplated at the time of the letting." On Dec. 9, 1871, the Canal Board, having made an examination of the matter pursuant to the said Act, found that the work for which French claimed an award "was contemplated at the time of the letting." A resolution to that effect was passed, but rescinded the same day, and the matter laid upon the table. On Dec. 28, 1871, the Canal Board resolved that French had "made expenditures greater than his contract price by the sum of fifteen thousand dollars, but that under said Act no allowance can be made," thus affirming the first resolution adopted so far as it found that the work was contemplated in the letting. Chapter 850, Laws of 1872, made an appropriation of fifteen thousand dollars "For payment of Edward H. French the amount as adjusted by the Canal Board for work on Section Five, Erie Canal, greater than his contract price." As under the first Act no allowance could be made, it would appear that French should not have been paid the fifteen thousand dollars under the second or Appropriation Act. Whether this was erroneously or wrongfully or gratuitously

paid him, he can have no claim to interest. These items amount to $96,448.22.

General observations.

The object of this Bill was to stop the wastes and frauds of the system of extraordinary repairs as it has hitherto been practised, to enable the Canal Board to terminate all the existing contracts except the few which in their judgment might be necessary to the beneficial use of the canals, and to apply the $1,600,000 of money which the measures of last year had reclaimed into the treasury, and the further sums which should be recovered, to real and substantial improvement of the main trunk water-ways. It was believed that by restoring the Erie Canal to its lawful depth of seven feet, and gradually increasing the volume of the water on the levels, the speed of the boats could be increased and the use of steam motive power facilitated. It was not intended to increase the draft of the boat, but merely to give it an easier traction and a swifter motion by lessening the retarding influence of the water confined in a channel having fixed physical boundaries. It is not doubted that a reduction in the cost of transportation could have been thereby effected more important than was attained by the recent reduction of tolls. The plan was sanctioned by the best engineering and scientific abilities and skill, and by ample practical experience.

But the interests which fatten on the abuses of the system of "extraordinary repairs" were vigilant in devising imaginary objections and in stimulating opposition. In the closing days of the session Mr. Burleigh, chairman of the Canal Committee of the Assembly, communicated to me the opinion that while the three hundred thousand dollars appropriated for the improvement of the Champlain Canal and the four hundred thousand dollars appropriated to bottoming out the Erie Canal could be maintained, the further appropriation of eight hundred thousand dollars for deepening the water-way of the Erie Canal was hopeless of passing the Senate. On consultation with him, as it was unwise to have that surplus remain idle in the treasury exposed to the risk of being frittered away

in jobs without any real utility, it was thought best to apply it to paying the deficiency in the Canal Sinking Fund, thereby enabling so much of the taxes to be remitted. That was accordingly done.

The items heretofore specified are objected to; the other portions of this Bill are

Approved, May 25, 1876.

Assembly Bill No. 102, *entitled,* "*An Act to provide for the creation of a Board of Charities and for a better administration of the public charities in the County of Kings.*"

Not approved.

This Bill creates a novel and eccentric appointing power, in which it vests the authority to appoint a commission of twelve persons who shall be governors of the charities of Kings County. The county judge and the sheriff of the county are to meet at the sheriff's office and to agree on twelve persons who are to constitute such commission; and if they do not agree within ten days, the county judge is to appoint six, and the sheriff is to appoint six of the governors; and if either fails for twenty days to appoint his share, the governors appointed are to fill the vacancies.

These provisions in effect divide the appointments between the judge and the sheriff. These officers have no motive to make any sacrifice of preference for the purpose of effecting an agreement. The only consequence of not agreeing is that each of these officers will have the absolute power to appoint one half the governors. In practice, six governors will be named by the county judge, and six will be named by the sheriff.

Legalizes an abuse.

The practice which has grown up in administrative boards of dividing public trusts among the individual members, as if there were a private property in the patronage involved in them, is itself an abuse of power and a breach of duty. This Bill commands such a distribution between two public officers for the purpose of effecting such

distribution between two political parties. It assumes that the main consideration is that the spoils of office should be fairly divided, and ignores the rights and interests of the public in the administration of official trusts.

The Constitution (Article X., Section 2) declares that all officers of the description of these governors shall be elected by the people or appointed by such local authority as the Legislature may direct. The intent of the Constitution undoubtedly is that such officers shall not be in effect appointed by the Legislature through a circuitous device, but that they shall either be chosen by the people of the locality, or appointed by some natural and appropriate organ of the people of the locality.

Evasion of the Constitution.

It cannot be supposed that the people voted for the county judge or the sheriff in contemplation of the appointment by those officers of persons to govern the charities of the great County of Kings. The authority created by this Bill is conferred on them after they were in office. There is nothing in the nature or functions of their offices to suggest the propriety of such a device.

Novel and eccentric appointing power.

There is no example in our laws of an act conferring the appointing power of a county officer on a sheriff; still less of an act conferring on a sheriff an appointing power which is exercised over half a million of people, comprising the second city of the State.

Unfitness of sheriff.

The present Bill embraces all kinds and degrees of unfitness. It is wholly novel. It was totally unexpected to the people when they elected the sheriff to his office. That office is lucrative; it is the sport of partisan contests. Its duties are of a nature which do not lead to the selection of persons having the elevation of character which the people usually require in high judicial or high administrative functionaries. It could not ordinarily be anticipated that a very good selection of governors of charities would emanate from such an appointing power. The present case is attended with incidents still more discouraging and repulsive. I am informed by Judge John A.

Lott, who was the chairman of a committee of citizens to whom the consideration of this matter was intrusted, that it was unanimously agreed to vest the appointing power in the county judge alone, and that the sheriff was afterward interpolated. Without meaning to express any opinion on the measure as it originally stood in its general character, or to sanction the policy investing judicial officers with administrative or political functions tending to demoralize the judicial office, the change, and the circumstances under which that change was made, increases the distrust of the expectation that practical good will flow from the violation of sound principles which the Bill involves.

Experience of such legislation.

Nearly all the evils of misgovernment in the city of New York during the last twenty-five years have been inflicted by just such legislation as is proposed by this Bill. Abuses or wrongs of local administration sometimes spring from defects of the governmental system, and sometimes from the frailties of human society. Existing evils naturally absorb public attention. Sometimes they are the motive to change, and sometimes the pretext for change.

The new expedient, even if intended in good faith as a reform, may be prolific of still greater evils than those which call for a remedy. But the mischiefs which always result from the violation of established principles of responsible government as it has grown up in centuries of experience, from a departure from the settled methods by which official accountability is created and made effective, are not usually foreseen by the unthinking contrivers of novel devices for instant change induced by impatience of present evils.

A still greater danger results from the fact that the occasions of such change are the opportunities for the worst designs of selfish cliques, factions, and partisans, and their schemes of ambition or plunder. As early as 1857 was instituted the non-partisan Board of Supervisors of the County of New York. It was a monstrosity in governmental science and governmental experience. It was practically irresponsible; it every year

absorbed new powers; until at last were generated the frauds and crimes which have become notorious in our public history.

The promoters of the dishonest trick of agreeing in the Legislature or the lobbies on a change in city officers and city patronage, and then creating a new appointing power to carry out the bargain, by conferring the authority on some existing official who had stipulated to make the desired removals and appointments, rapidly grew in audacity and in corrupt methods and corrupt means. In 1870, when a Bill was about to be passed, earlier than the Tweed Charter, it has been credibly stated that the officer to nominate and the officers to confirm were each sworn, in private, to select the designated persons.

When the Tweed Charter was pending, on the 4th of April, 1870, I addressed the Senate committee, pointing out the fact that the Bill had all its significance in a few clauses which terminated all existing offices, gave to the mayor then in office the power to make the new appointments, and destroyed all the accountability of these new officers by removal or by any supervising control by the people or their known organs. That speech contained the following passage: —

"I am not afraid of the stormy sea of popular liberty. I still trust the people. We no doubt have fallen upon evil times; we no doubt have had many occasions for distrust and alarm: but I still believe that in the activity generated by the effectual participation of the people in the administration of the government you would have more purity and more safety than under the system to which we have been accustomed. It is in the stagnation of bureaus and commissions that evils and abuses are generated. The storms that disturb the atmosphere, clear and purify it. It will be so in politics and municipal administration if we will only trust the people."

The immediate reply was made by the counsel of the Citizens' Association. The Bill was advocated as a reform measure, framed on non-partisan ideas. It was supported by two hundred eminent citizens. It was passed almost unanimously. Mr. Tweed was hailed in a leading Republican journal as a

reformer. It was avowed that the city offices were to be divided between the two political parties, and it was scarcely concealed that money had been used to obtain votes for the Bill. One month and a day later — on the 5th of May, 1870 — occurred the flagitious transaction known as the "special audit," in which $6,312,500 of the proceeds of new bonds were divided up, for not 10 per cent of which was there any pretence of an equivalent.

This transaction, and other similar ones which followed, were not the fruits of popular election or popular government; they were the direct results of immunity from discussion in the newspapers and immunity from the voting power of the people. No official would have dared to commit crimes which required continuous secrecy if he had not been in office under a law that sheltered him from removal and from accountability, — a law which could not be changed until a future session of the Legislature, and then could not be changed except with the concurrence of all the three branches of the legislative power. All the established maxims of responsible government had to be violated to make possible such enormous public wrongs. These wrongs were the natural outgrowth of the system, and its corrupt objects and its corrupt means by which it was brought into existence.

This is but one of many illustrations. The worst results which sometimes come from elective systems of government are small evils compared with those that flow from government under secret bargains and corrupt arrangements made in the lobbies at Albany.

My previous declarations on this subject.

These are no new opinions. They have matured during twenty-five years of observation of municipal government in this State. They accord with the best deductions and best experience concerning human government in civilized countries.

Annual Message of 1875.

The following observations are contained in my first Annual Message, sent to the Legislature in January, 1875: —

"All the invasions of the rights of the people of the city of New York to choose their own rulers and to manage their own affairs — which have been a practical denial of self-government for the last twenty years — have been ventured upon in the name of reform, under a public opinion created by abuses and wrongs of local administration that found no redress. When the injured taxpayer could discover no mode of removing a delinquent official, and no way of holding him to account in the courts, he assented to an appeal to the legislative power at Albany; and an Act was passed whereby one functionary was expelled, and by some device the substitute selected was put in office. Differing in politics as the city and State did, and with all the temptations to individual selfishness and ambition to grasp patronage and power, the great municipal trusts soon came to be the traffic of the lobbies. A new disposition of the great municipal trusts has been generally worked out by new legislation. The arrangements were made in secret. Public opinion had no opportunity to act in discussion, and no power to influence results. Inferior offices, contracts, and sometimes money, were means of a competition from which those who could not use these weapons were excluded. Whatever defects may sometimes have been visible in a system of local self-government under elections by the people, they are infinitely less than the evils of such a system, which insures bad government of the city and tends to corrupt the legislative bodies of the State. A popular election invokes publicity, discussion by the contending parties, opportunity for new party combinations, and all the methods in which public opinion works out results."

In my Special Message of May 11, 1875, recommending a commission to consider the problem of municipal government, the same principles are asserted.

Special Message on municipal government.

"The abuses and wrongs of the local administration which found no redress generated a public opinion under which appeal was made, in the name of reform, for relief to the legislative power at Albany; and it was found that an Act could be easily contrived whereby one official could be expelled from office and by some device a substitute put in his place. It was found, likewise, that the powers of an office could be withdrawn and vested in a different officer or in a commission, the selection of which could be dictated from the State capitol.

Interference with local government.

"It is the experience of human government that abuses of power follow power wherever it goes. What was at first done,

apparently at least, to protect the rights of the minority or of individuals, — what was at first done for the sake of good government, — came in a little time to be done for the purposes of interested individuals or cliques. . . .

"These were the fruits, not of a popular election, not of local self-government, but of the culmination of a system under which the governing officials had been practically appointed by legislative acts of the State. The device of creating a special appointing power to do what was desired by a clique or party, or was agreed upon beforehand, was not perfectly new. It had been frequently used in a smaller way.

"The contagion of such practices threatens to extend to other cities. If public opinion and the state of the Constitution and laws allow it, the temptation to transfer the contest for offices from the local elections to the legislative halls will arise as often as aspirants are defeated and can expect to recover there what they have lost at home. There is no remedy except in the refusal to give to such devices the sanction of law, until constitutional provision shall give permanency to the methods of appointment and removal in municipal governments."

Commission on municipal government.

The commission appointed to consider the subject of municipal government had their period of service extended at the late session with a view of preparing amendments to the Constitution. No doubt the most important provision will be one regulating the appointing power in cities, and prohibiting the incessant interference of the Legislature, creating new dispositions of the local offices, which have been so prolific of abuses, wrongs, and frauds. Under such provisions the present Bill would become impossible.

Precedents.

It happened last year that Mayor Hunter and the Common Council of Brooklyn disagreed about important appointments. A Bill was passed to remove the deadlock, if it should continue for thirty days, by creating a new power of nomination, consisting of three officers of the city government, of which the mayor was one, but was liable to be in a minority. I deemed it my duty to refuse my sanction to that Bill. At the same session, as at the present, the incessant local conflicts within the city of New York were prolific of similar expedients, alternately attempted by opposite

parties and by rival factions. None of them received any countenance or favor from me.

Conclusion.

Without entering on the inquiry whether a clear or commanding public benefit or necessity might create an exception to the application of these principles, it is enough to say that no such question is raised by this Bill. Two of the five commissioners of the present Board of Charities are to be elected by the people of Kings County in less than six months. I see no reason to doubt that their choice will be as likely to be good as the arbitrary selection or private agreements of the sheriff as to six of the twelve proposed new governors. At any rate, the public will have some chance to know about them; they will be submitted to the test of an open and public discussion.

If an appointive method be preferred to an elective method, organs of the popular will more fit than the sheriff, or even the county judge, can be found by separating the charity system of the city of Brooklyn from that of the County of Kings. A better machinery than the twelve governors of the charities of Kings County can be devised. The experience of the ten governors of the charities of the city of New York was disastrous, and they were abolished with universal applause. The appointments by the county judge and sheriff, if the proposed Bill should become a law, are for one, two, three, and four years; and no change could be made without the concurrence of all three branches of the legislative power. The remedy for error or wrong in the selection would be much more difficult than at present; and if the new expedient should fail of realizing any improvement on the present system, it would greatly delay the possibility of effecting any improvement. Of all the gentlemen who have favored the Bill with whom I have had interviews, none have approved such a method of appointment as a permanent system, nor have any professed to regard the sheriff as a fit or safe depositary of such a power, or offered any sort of justification for a scheme hitherto totally unknown in the laws or polity of this State.

Assembly Bill No. 275, *entitled*, "*An Act to reappropriate moneys for the payment of awards made by the Canal Appraisers, and expenses attending the same, and the payment of awards by the Canal Board.*"

I object to the following item of this Bill: —

"The unexpended balance of $1,011,138.42 appropriated by Act, Chapter 768 of the Laws of 1870, entitled, 'An Act to authorize a tax of seven eighths of a mill per dollar of valuation for the payment of the awards of the Canal Appraisers, and for supplying deficiencies in appropriations of 1868 and 1869,' passed May 9, 1870, and reappropriated by Acts, Chapter 509 of the Laws of 1872, and Chapter 392 of the Laws of 1874, being the sum of $89,881, or so much thereof as shall remain unexpended on the 9th day of May, 1876, is hereby reappropriated to pay the awards made by the Canal Appraisers in the years 1868 and 1869, and the interest thereon, or the amounts which may be awarded in lieu thereof, on appeals from the original awards by the Canal Board or by the Canal Appraisers on any rehearing of such cases."

This item provides the money to pay several awards made by the Canal Appraisers in 1868 and 1869, at least one of which, and that one being for a large portion of the sum reappropriated, is now known to be fraudulent. In some of the other cases appeals have been taken from the awards, and are still pending.

As this item is drawn, I cannot strike out one of these claims without disapproving of the whole item. I think it better, therefore, to object to the whole appropriation, leaving it to a subsequent Legislature to provide for the payment of the honest claims, especially as most of those claims are in litigation, and will not be finally adjusted during the present year. The remainder of the Bill is

Approved June 2, 1876.

Senate Bill No. 94, *entitled*, "*An Act to amend Section* 7 *of Chapter* 633 *of the Laws of* 1866, *entitled*, '*An Act in relation to the Benevolent Fund of the late Volunteer Fire Department in the City of New York, passed April* 17, 1866, *as amended by Chapter* 962 *of the Laws of* 1867, *and as further amended by Chapter* 297 *of the Laws of* 1870.'"

Not approved.

By the existing law the tax on the receipts of foreign insurance companies doing business in the city of New York is to be paid over to the firemen's relief funds during a period ending April 17, 1877. This Bill amends the existing law so that the tax shall be so paid for ten years from that date. It is so carelessly drawn that the existing law would be superseded if it were signed, and there would be no provisions by which the tax for the present year, ending April 17, 1877, could be paid. If it be not signed, the tax can be paid until then, and the next Legislature can make provision for its payment after that date if it be proper and expedient to prolong the allowance. Meanwhile the present Fire Commissioners send me their unanimous protest against the expediency and necessity of the measure. A Bill which gives rise to these objections should be remitted to future legislation.

Assembly Bill No. 201, *entitled*, "*An Act in relation to District Courts in the City of New York.*"

Not approved.

This Bill would effect a considerable reduction in the cost of the New York city district courts. But the justices who were chosen at the last general election, though by different parties, have united in a representation to me that it would materially interfere with the efficiency of the courts. It is not necessary for me to examine as to that, as there is a fatal constitutional objection to the Bill. Upon taking office the justices displaced

fifteen of the clerks and assistant-clerks. Their power to do so was contested; and on the 4th of January last the Attorney-General began an action to oust one of the new clerks, that the matter might be judicially determined. The case has been argued, and is now awaiting the decision of the General Term. This Bill undertakes to legislate the new clerks into office. If they are not now legally in office, such legislation is an appointment. The Court of Appeals held, in the case of The People against Batchelor (22 N. Y. Reports, p. 128), that such an appointment is beyond the power of the Legislature. That case was decided upon another point; but the majority opinion by Judge Selden and the dissenting opinion by Judge Denio concur in holding that these clerks are city officers, and the Legislature cannot appoint them. The Court was unanimous upon that point, and its decision must now control my action.

Senate Bill No. 249, *entitled*, "*An Act relating to the Local Government of the City of New York.*"

Not approved.

This Bill contains many useful and valuable provisions. It also contains some provisions which are experimental, and too absolute and rigid for the practical working of administration, and which are likely to introduce confusion when instantly imposed on a complicated existing system without time for adaptation or assimilation.

The Bill, on the eve of its passage, was subjected to interpolations which ought not to be acquiesced in. One of them is the clause which attempts to impose on the city a burden of probably a million and a quarter of dollars in respect to former assessments. This provision is not akin to the object of the Bill as expressed in its title. If deemed to be unconstitutional and void, while it would be of no use to the parties who have secured its insertion, it still remains an insurmountable obstacle to Executive sanction. It was added without consideration by

the Legislature, and for the purpose of compelling acquiescence or the destruction of the whole Bill. This and other objectionable clauses are instances of legislative log-rolling which are bad in principle, of evil example, and which ought not to be allowed to succeed. The policy of the Constitution requires that such provisions should be separate measures, and should be submitted to the independent judgment of the law-making branches of the Government. If there be an equity in favor of the parties to be benefited, relief should be sought on its own merits. Another provision threatens to impair the defences of the city against fraudulent, irregular, or illegal contracts.

On the whole, while regretting to lose the useful parts of the Bill, I am unwilling, for the sake of the temporary advantages of them before the subject can be again acted upon, to impose its exactions or to incur the risks of confusion in the actual conduct of the public business of the metropolis.

Assembly Bill not printed, *entitled*, "*An Act to legalize the Proceedings of the annual Town Meeting of the Town of Ontario, Wayne County, held March* 7, 1876."

Not approved.

This Bill provides that, notwithstanding certain irregularities said to have occurred at the town meeting held in the town of Ontario in 1876 in respect to the keeping of the poll list and the canvassing of the votes, "the result as declared by the Town Board shall be, and is hereby held to be, legal."

If the Bill only provided that the election of town officers for that town should not be invalidated by reason of any informality in the keeping of the poll list or the canvassing of the votes, I should have no hesitation in signing it, although I might think it unnecessary, as the courts would probably hold that the statutory provisions regulating the manner of conducting town elections are directory, and not mandatory. But the Bill seems to declare that the ticket which the Town Board decided to have been elected was in fact elected. This is clearly beyond

the province of the Legislature. If the officers declared by the Board to have been elected in fact received a plurality of the legal votes cast, they are the duly chosen officers of the town; if they did not receive such a plurality, the Legislature cannot place them or confirm them in office.

Senate Bill No. 96, *entitled,* "*An Act in relation to the Repair of certain Streets in the City of Albany.*"

Not approved.

This Bill is identical with Assembly Bill No. 229, which passed both Houses of the Legislature and was approved by the Governor April 22, 1876. It is unnecessary to re-enact it.

Assembly Bill No. 545, *entitled,* "*An Act to authorize the appointment of an additional Policeman in the City of Schenectady for the protection of the property of Union College.*"

Not approved.

This Bill authorizes the trustees of Union College to appoint a policeman for the city of Schenectady. The Constitution (Article X., Section 2) prescribes that "all city, town, and village officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

Assembly Bill No. 184, *entitled,* "*An Act to provide for the election of a Police Justice in the Town of Watervliet, in the County of Albany.*"

Not approved.

The Fourteenth, Fifteenth, Sixteenth, and Seventeenth Sections of this Bill contain provisions relating to the sheriff, deputy-sheriffs, constables, justices of the peace, and police commissioners which are not indicated in the title of the Bill; and as the Bill is local, these provisions are within the inhibition of Section 16 of Article III. of the Constitution.

Assembly Bill No. 492, *entitled*, "*An Act to establish a Board of Governors of the House of Industry of the County of Rensselaer, and to provide for the care of the Poor and Insane in said County.*"

Not approved.

This Bill appoints, by name, twenty-nine persons governors of the House of Industry of Rensselaer County who in fact supersede and are invested with the powers of the superintendents of the poor of that county. There can be no doubt that these are county officers. Under the Constitution all county officers must be elected by the electors of the county, or appointed by the Board of Supervisors or other county authorities, as the Legislature shall direct. The Board of Supervisors, by resolution, protest against the approval of this Bill.

Assembly Bill No. 402, *entitled*, "*An Act providing for the assessment of real estate in the Town of Vienna, County of Oneida.*"

Not approved.

The object of this Bill seems to be to provide that where a farm is situated partly within and partly without the town of Vienna, and the owner or occupant resides without the town, that portion of the farm lying within the town shall be assessed therein. If this rule is a proper one to be adopted for that town, there is no reason why it should not be made applicable to the other towns in the State.

Assembly Bill No. 362, *entitled*, "*An Act to amend Section* 2 *of Chapter* 890 *of the Laws of* 1868, *entitled*, '*An Act to authorize Lewis Runyon to establish a Ferry across Seneca Lake at Lodi Landing.*'"

Not approved.

By the Act of 1868 Lewis Runyon was authorized to establish a ferry across Seneca Lake at Lodi Landing by the 1st day of September, 1869, and upon the establishment first of

such ferry all persons were prohibited from carrying persons for hire across that lake within two miles of the ferry so established, under a penalty. The time for the establishment of such ferry has, by different acts, been extended to the 1st day of September, 1875, and has now expired. This Bill further extends the time until the 1st day of September, 1877, but provides that nothing in it contained shall be held to grant an exclusive privilege to maintain the ferry. If the Bill does re-enact the restrictive provisions of the Act of 1868, it is unconstitutional, as granting to a private individual an "exclusive privilege, immunity, or franchise;" if it does not, it gives to the donee nothing which he does not already possess in common with every citizen of the State.

Assembly Bill No. 570, *entitled*, "*An Act to legalize the Proceedings of the Town Meetings, so far as the same relates to the Election of Highway Commissioners, held in and for the Town of Alden, Erie County, on the* 1*st Tuesday of March*, 1876."

Not approved.

This Bill undertakes in effect to declare that the person whom the Board of Canvassers decided to have been elected at a town meeting in the town of Alden was in fact duly elected. If there is any controversy upon that subject, it is one that should be settled by the courts. It is not within the province of the Legislature to decide as to the regularity of an election, or to adjudicate as to the candidate who was duly chosen.

Assembly Bill No. 260, *entitled*, "*An Act to change the name of the Rochester and Pine Creek Railway Company.*"

Not approved.

This Bill is rendered unnecessary by the passage of Chapter 280 of the Laws of this year, so amending the General Act of 1870 as to authorize railroad companies to change their names in the manner and under the restrictions prescribed by that Act.

Assembly Bill No. 607. — *An Act to amend Act incorporating Peekskill Academy.*

Not approved.

Assembly Bill No. 312. — *An Act to authorize sale of land for non-payment of taxes in Rockland and Delaware Counties.*

Not approved.

Assembly Bill No. 324. — *Authorize Treasurer of Monroe County to collect certain taxes.*

Not approved.

Assembly Bill No. 327. — *Legalize State and County taxes in Cohoes.*

Not approved.

Assembly Bill No. 263. — *To amend Act in relation to support of Insane in Genesee County.*

Not approved.

Assembly Bill No. 406. — *Relative to Cemetery at Port Byron.*

Not approved.

Assembly Bill No. 635. — *For removal of bodies from burial-ground in Norwood, St. Lawrence County.*

Not approved.

Assembly Bill No. 451. — *To prohibit interments of dead in First M. E. Burial Ground at Carlton, Orleans County.*

Not approved.

Assembly Bill No. 432. — *Amend Act providing for instruction of Common School Teachers.*

Not approved.

Assembly Bill No. 597. — *Distribute school tax from Southern Central R. R. among school districts of Town of Hartford, Cortland County.*

Not approved.

Assembly Bill No. 561. — *For a Fire Department in Second School District of Glennville, Schenectady County.*

Not approved.

Assembly Bill No. 639. — *To amend Act incorporating Village of Bath-on-the-Hudson.*

Not approved.

Assembly Bill No. . — *To repeal Act for election of Police Justices in villages so far as relates to Greene County.*

Not approved.

Assembly Bill No. . — *To amend Act incorporating Village of Camden.*

Not approved.

Assembly Bill No. 295. — *Concerning Notary Public in Counties of Kings, Queens, Richmond, Westchester, Putnam, Suffolk, Rockland, and the City and County of New York.*

Not approved.

Assembly Bill No. 407. — *Authorize Buffalo and Grand Island Ferry Company to increase capital stock.*

Not approved.

Assembly Bill No. 449. — *For sale of real estate of the Western New York Agricultural Society.*

Not approved.

Assembly Bill No. 131. — *Regulate voting in Western New York Agricultural Society.*

Not approved.

Senate Bill No. 66. — *Amend Act for draining land adjoining Black Lake.*

Not approved.

Senate Bill No. 65. — *Amend Act for draining overflowed land adjoining Black Lake.*

Not approved.

Senate Bill No. 95. — *Authorize a sewer along Beaver Creek in Albany.*

Not approved.

Senate Bill No. 287. — *For construction of an iron bridge over Clark and Skinner Canal, at Scott Street, in Buffalo.*

Not approved.

L.

The New York Chamber of Commerce invited Governor Tilden to be its guest at its annual dinner on the evening of the 4th of May, 1876. The Governor arrived from Albany during the dinner, and was placed on the right of Samuel D. Babcock, president, who occupied the chair. On the left sat Mr. Pierrepont, then Attorney-General of the United States; and next on his left was Ex-Governor John A. Dix.

To the first regular toast, "The President of the United States," Mr. Pierrepont responded. The feature of his speech was the discomforts, the vexations, and the trials incident to the life of Presidents in general and to that of President Grant in particular. "I am acquainted," he said, "with one man — and very well acquainted with him — who has been President of the United States for the last eight years nearly; and I have had some private talks with him on the delights of that place, and I may be able to communicate some information to those men who are so anxious to get the place, how very charming it is. When this man of whom I speak was forty-six years old you called him from the camp and from a great office which he held for life, and insisted that he should be President of the United States; and you placed him in that responsible situation when he was utterly unused to public affairs, wholly inexperienced in politics, knowing nothing of the tricks and the treachery which belong thereto. You placed him there at the end of a great civil war, when you had released from bondage four millions of ignorant slaves, when the country was utterly demoralized by war, and corrupted by the over-issue of paper money. There you placed this inexperienced soldier; and as honest men I ask you, Did you expect that he could commit no blunder — that he could make no mistake? I know that your

response is that you could not so have expected an impossibility and a thing so unreasonable. He will tell you that he has committed blunders and that he has made mistakes; but he will tell you, and every man will tell you, and when Malignity has done her worst, and from the penitentiary and insane asylums has called her witnesses, his friends may defy any man to find in his entire record a single thing that will be a blot upon his integrity. . . . Now, my friends, he has gone through a fiery trial, — he is not done yet; but don't have any doubts that he will come out of it unsinged, and that you will find this great general, on whom you have so relied and whom you have so admired, deserving of all the favors and all the admiration you have bestowed. He is so generous a man, gentlemen, that he will not be unwilling to see any good, honest, patriotic man take his place at the end of eight months, and he will be willing to see him enjoy all the luxuries and delights and the charms and the undisturbed repose which belong to the place; and if there is any man here who is thinking at all about this place [here the speaker glanced slyly at Governor Tilden, and his eyes were followed by the amused looks of the company, which broke out with uproarious laughter and applause as the serious and unmoved countenance of the Governor met their view], — I can assure him that when General Grant has stepped out of that place, he will look serenely on and see him enjoy the luxury and the delights and repose of the place without a single twinge of envy."

At a later stage of his speech the Attorney-General arraigned the Municipal Government of New York city as responsible largely for the general depression of business, of which the mercantile world were then justly complaining. "Every man of you tells me, and one of your oldest members told me in the other room that in his experience of fifty years never was New York so depressed. Why is it so depressed? Because by fraudulent government your taxes have been so increased that trade cannot prosper here, — that everything is made so expensive that other cities come in and undermine you and take away your trade. I have had occasion in my official place lately, from questions sent to me from the Treasury Department relating to the transmission of goods that come here in bond, to enter into this question about the prosperity of my

own great city; and I tell you here to-night that under the system that now exists, from the bad government from which the city has suffered, — and from which my friend here [Governor Tilden] and myself tried years ago to release it all we could, and yet we could not relieve it, — so great are the expenses here that I can put down a bale of goods in Chicago cheaper than I can in Union Square to-day."

To the second regular toast, "The State of New York," Governor Tilden was called upon to respond. The personal allusions in the speech of the preceding speaker were of such a character — coming as they did from a Cabinet minister speaking for and in behalf of the President — that Governor Tilden's remarks were necessarily more or less responsive to them, and therefore unpremeditated.

SPEECH AT THE ANNUAL DINNER OF THE NEW YORK CHAMBER OF COMMERCE.

Mr. President and Gentlemen, — I speak a word to-night for our State; my friend the President has warned me it must be but a word. I think the wisdom of the commercial community, without doubt, is concentrated and personified in your presiding officer, and I shall not therefore dare to disobey his injunction or to trespass upon your time beyond his limit.

We have heard from the gentleman who last addressed us a doleful account of the experiences of the present incumbent of the Presidential chair, — and I confess, as I look around me, I see that his statement appears to depress several gentlemen here; but inasmuch as your presiding officer, with characteristic good judgment, has arranged all the gentlemen who are thinking of such things upon the left of the chair, and in the order, I presume, of their prospects, I do not feel called upon to dwell upon that subject or to take it out of their mouths. I am myself to-night depressed, — a little depressed and a little joyful: depressed, for I have left to-day in Albany two hundred and seventy bills on which I have to pass within the next twenty odd days; but joyful when I think of the several hundred others which were not sent to me.

I do not know that I can add anything to what has been already said upon the subject of our commercial troubles. Nothing so much interests this audience; but inasmuch as the Federal Government has sent its Attorney-General here to put in a *cognovit*, I don't see that anything remains but to enter judgment. Undoubtedly when my friend the Attorney-General

asks, "What is the matter with you?" and then, Yankee-like, answers his own question, and says, "Taxation and abuses in government," he puts his finger on the real mischief. But he seems to have the impression that the principal source of the evil is the Municipal Government. Now, my fellow-citizens, the Federal Government draws from our population, from our men of business, — draws from the five millions of people who inhabit this State of New York, — far more of taxes than the State Government and all the Local and Municipal Governments in the aggregate.

Mr. Opdyke, in the Convention of 1867, estimated the taxes of the Federal Government taken from the State of New York at eighty million dollars annually. Now, putting it at much less than that, it exceeds all the local taxes and all the State taxes; and in that connection I have the satisfaction to announce to you that our Legislature this session has kept down the tolls on the Erie Canal, provided for all needed repairs, and remitted eight million dollars of taxes that were drawn from the people of this State two years ago. That naturally brings the mind to consider not only the evils of government, but also the remedies. It is idle to talk about over-taxation unless we reduce taxation. Now at the close of this session the State Government remits to the people of this city four million dollars of taxes.

I quite agree with the speaker who last addressed you as to the influence and power which the body I am addressing can exercise over public opinion and over the destinies of our country; and if, with bold, fearless, and decisive hand, it will strike at the root of these evils, prosperity will return to us. Of course I am not here to night to deal in homiletics; I am simply making what a Down-East parson would call an application of the sermon — the very excellent sermon — of my friend the Attorney-General.

LI.

Governor Tilden was present by invitation at the fair of the Young Women's Christian Association, held at the Academy of Music on the evening of Saturday the 7th of May, 1876. The Governor's allusion to Mr. James Stokes is explained by the fact that that excellent gentleman had given fifteen thousand dollars to the purchase of the building occupied by the Association. Mr. Stokes's father was the late Thomas Stokes, who shares with Robert Raikes the fame of founding the modern Sunday-School system. After paying his respects to the officers of the Association, the Governor was conducted to the centre box in the first tier, where he made the following brief address.

VACATION SPEECH — ADDRESS AT THE FAIR OF THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION.

Ladies and Gentlemen, — In the fitness of things the offices of holy charity peculiarly belong to the female sex. The poet makes the dying Marmion exclaim, —

> "O woman! . . .
> When pain and anguish wring the brow,
> A ministering angel thou!"

In enthusiasm, — the tendency to idealize, — in the spirit of sacrifice and devotion that grows out of the sentiment of affection, the womanly nature has vast reserves of force capable of being collected, organized, and utilized for the purposes of public charity. I sympathize with your Association because this is your object.

I had occasion myself a short time ago to plant a germ of the graces and capabilities of the female sex in the arid wastes of the State Board of Charities. It seemed to me a simple and natural thing to do. I had some legal scruples to evade, some difficulties to overcome; but I did it, and I woke up next morning and found myself famous. Not more astonished was Lord Byron when he heard of "Childe Harold" being read on the banks of the Ohio. I received letters of approval and congratulation from gallant young gentlemen like William C. Bryant and Charles O'Conor.[1] On the whole, I consider it perhaps the solitary success of my whole life with the female sex; for I read in the "Evening Post" — I think it was — that during all these diligent and laborious years of my life I had been but writing

[1] Bryant was then 82 years of age, and O'Conor 72.

my name on the sands close to the sea, so that each succeeding wave obliterated all I had written; but that I should now go down in history because of this graceful, fortunate, and happy conception. It is well to get renown on such honorable terms. I was at the Chamber of Commerce dinner, and near me sat the Rev. Dr. John Hall, and he told a dream. The dream was of Saint Peter; and about that time Mr. Dodge came to me and pressed me to attend here to-night. Of course I went home with my head somewhat confused; and by and by, in the small hours of the morning, that portion of the Rev. Dr. Hall's dream which he had not recounted, appeared to me in a vision. I thought I saw Mr. James Stokes approaching the gate of Heaven, and Saint Peter said: "What are your titles to enter here?" Now Mr. Stokes thought he would mention what seemed to him the best thing he had ever done; so he mentioned his benefaction to this Society. "Stop," said Saint Peter; "I see no evidence that this is a voluntary free-will offering, because it is a mere surrender to the most charming of all the Orders of mendicants. We have no entry on our books of that act." Mr. Stokes looked astonished and troubled; but Saint Peter's countenance was suffused with a kindly smile, and he said: "Now, having notice of the fact, anything more that you do hereafter, or anything that your friends or others choose to contribute to this object, shall be regularly entered in the accounts of Heaven to your credit." Just at that moment the vision faded; and I thought how much better is reality than the best of dreams, because Mr. James Stokes and his friend Mr. Dodge still live among us. Long may they live as bright examples to whom all of you may look! They are heaping up treasures where moth does not corrupt, nor thieves break through and steal. I admire their example; I commend it to your imitation; and I commend to you also the chief donor to this society, the son of one of the earliest founders of modern missionary societies and a worthy descendant of the zealous coadjutor and ally of the founder of Sabbath-schools in England and in the world.

LII.

The National Democratic Convention of 1876 selected to nominate candidates for the Presidency and Vice-Presidency met in the great hall of the Board of Trade in St. Louis at noon on the 27th of June, 1876. General John A. McClernand was selected as the permanent chairman of the Convention. When in the call of the States for the presentation of candidates the State of New York was reached, Francis Kernan, one of the United States senators from the State of New York, and chairman of the New York delegation, arose and said:

"The great issue upon which this election will be lost or won is that question of needed administrative reform; and in selecting our candidates, if we had a man that had been so fortunate as to be placed in a public position, who had laid his hand on dishonest officials, no matter to what party they belonged, or had rooted out abuses in the discharge of his duty, who had shown himself willing and able to bring down taxation and inaugurate reform, — if we are wise men and have such a man, it is no disparagement to any other candidate to say that this is the man that will command the confidence of men who have not been always with the Democracy, and make our claim strong, so that it will sweep all over this Union a triumphant party vote.

"Governor Tilden was selected as governor of our State; he came into office Jan. 1, 1875. The direct taxes collected from our tax-ridden people in the tax levy of 1874 were over fifteen millions of dollars. He has been in office eighteen months, and the tax levy for the State treasury in this year, 1876, is only eight millions of dollars. If you go among our farming people, among our men who find business coming down and their produce bringing low prices, you will find that they have faith in the man who has reduced taxation in the State of New York one half in eighteen months; and you will hear the honest men throughout the

country say that they want the man who will do at Washington what has been done in the State of New York.

"Now do not misunderstand me. We have other worthy men and good in the State of New York who, if they had had the chance to be elected, and had had a chance to discover the frauds in our State administration, among our canals, which were thus depleting our people, would have done the work faithfully. But it so happened that Samuel J. Tilden reaped this great benefit for our people and this great honor for our party.

Governor Tilden was nominated on the second ballot by the following vote: —

Whole vote	738
Necessary for a choice	492
Samuel J. Tilden, of New York	535
Thomas A. Hendricks, of Indiana	60
William Allen, of Ohio	54
Joel Parker, of New Jersey	18
Winfield Scott Hancock, of Pennsylvania	59
Thomas Bayard, of Delaware	11
Allen G. Thurman, of Ohio	2

The Convention appointed a committee, of which the Chairman of the Convention was a member, to wait upon Governor Tilden at his residence in New York city and apprise him of his nomination. The committee called upon the Governor on the 11th of July, when General McClernand read to him the following address: —

Governor Samuel J. Tilden.

Sir, — The undersigned, a committee of the National Democratic Convention which met at the city of St. Louis, Mo., on the 27th ultimo, consisting of its president and of one delegate from each State of the Federal Union, have been intrusted with the pleasant duty of waiting upon and informing you of your nomination by that body as the candidate of the Democratic party for the Presidency of the United States at the ensuing election.

It is a source of great satisfaction to us, who but reflect the opinions of the members of the Convention, that a gentleman entertaining and boldly advancing, as you do, and have done, those great measures of national and State reform which are an absolute necessity for the restoration of the national honor, prosperity, and

credit, should have been selected as our standard-bearer in the approaching contest. Your name is identified with the all-absorbing question of reform, reduction of taxes, and the maintenance of the rights of the laboring masses. The Democracy, in designating you as their chosen leader, do not feel that they are relying merely upon your pledges or promises of what you will do in the event of your election; your record of the past is our guaranty of your future course. Having been faithful over a few things, we will make you a ruler over many things.

Accompanying this letter of notification, we also present you with the declaration of principles adopted by the Convention. We have no doubt that you will recognize in this declaration measures of political policy which immediately concern the happiness and welfare of the entire people of this country; and we feel that your election to the Presidency will be a guaranty of their success, and it will be as much your pleasure to enforce and maintain them, if elected, as it is ours to give them the stamp of national representative approbation and approval in their adoption. Entertaining the hope that you will signify to us your acceptance of the nomination which we have tendered you, and that you concur with the Convention in their declaration of principle, we are, dear sir, your very obedient servants,

JOHN A. MCCLERNAND, *Chairman*,
And all the members of the National Committee.

Governor Tilden replied, first in a brief speech, and subsequently in a letter, which are here given in their order of time.

REPLY TO GENERAL McCLERNAND'S ADDRESS ADVISING MR. TILDEN OF HIS NOMINATION FOR THE PRESIDENCY, JULY 11, 1876.

General McClernand and Gentlemen of the Committee, — I shall at my earliest convenience prepare and transmit to you a formal acceptance of the nomination which you now tender to me in behalf of the Democratic National Convention, and I do not desire on this occasion to anticipate any topic which might be appropriate to that communication. It may, however, be permitted to me to say that my nomination was not a mere personal preference between citizens and statesmen of this Republic who might very well have been chosen for so distinguished an honor and for so august a duty. It was rather a declaration of that illustrious body, in whose behalf you speak, in favor of administrative reform, with which events had associated me in the public mind. The strength, the universality, and the efficiency of the demand for administrative reform, especially in the administration of the Federal Government, with which the Democratic masses everywhere are instinct, has led to a series of surprises in the popular assemblages, and perhaps in the Convention itself. It would be unnatural, gentlemen, if a popular movement so genuine and so powerful should stop with three and a half millions of Democrats; that it should not extend by contagion to that large mass of independent voters who stand between parties in our country, and even to the moderate portion of the party under whose administration the evils to be corrected

have grown up. And perhaps in what we have witnessed there may be an augury in respect to what we may witness in the election about to take place throughout our country; at least, let us hope so and believe so.

I am not without experience of the difficulty, of the labor of effecting administrative reform when it requires a revolution in policies and in measures long established in government. If I were to judge by the year and a half during which I have been in the State government, I should say that the routine duties of the trust I have had imposed upon me are a small burden compared with that created by the attempt to change the practice of the government of which I have been the executive head. Especially is this so where the reform is to be worked out with more or less of co-operation of public officers who either have been tainted with the evils to be redressed, or who have been incapacitated by the habit of tolerating the wrongs to be corrected, and to which they have been consenting witnesses. I therefore, if your choice should be ratified by the people at the election, should enter upon the great duties which would be assigned to me, not as a holiday recreation, but very much in that spirit of consecration in which a soldier enters battle.

But let us believe, as I do believe, that we now see the dawn of a better day for our country, that — difficult as is the work to which the Democratic party, with many allies and former members of other parties, has addressed itself — the Republic is surely to be renovated, and that it is to live in all the future, to be transmitted to succeeding generations as Jefferson contributed to form it in his day, and as it has been ever since, until a recent period, — a blessing to the whole people and a hope to all mankind.

Gentlemen, I thank you for the very kind terms in which you have made your communication, and I extend to you, collectively and individually, a cordial greeting.

LIII.

GOVERNOR TILDEN'S LETTER ACCEPTING THE NOMINATION OF THE NATIONAL DEMOCRATIC CONVENTION FOR THE PRESIDENCY.

ALBANY, July 31, 1876.

GENTLEMEN, — When I had the honor to receive a personal delivery of your letter on behalf of the Democratic National Convention, held on the 28th of June at St. Louis, advising me of my nomination as the candidate of the constituency represented by that body for the office of President of the United States, I answered that, at my earliest convenience, and in conformity with usage, I would prepare and transmit to you a formal acceptance. I now avail myself of the first interval in unavoidable occupations to fulfil that engagement.

The Convention, before making its nominations, adopted a Declaration of Principles which, as a whole, seems to me a wise exposition of the necessities of our country and of the reforms needed to bring back the government to its true functions, to restore purity of administration, and to renew the prosperity of the people. But some of these reforms are so urgent that they claim more than a passing approval.

Reform in public expense.

The necessity of a reform "in the scale of public expense — Federal, State, and municipal" — and "in the modes of Federal taxation" justifies all the prominence given to it in the declaration of the St. Louis Convention.

The present depression in all the business and industries of the people, which is depriving labor of its employment and carrying want into so many homes, has its principal cause in excessive governmental consumption. Under the illusions of a specious prosperity engendered by the false policies of the Federal Government, a waste of capital has been going on ever since the peace of 1865 which could only end in universal disaster. The Federal taxes of the last eleven years reach the gigantic sum of $4,500,000,000. Local taxation has amounted to two thirds as much more. The vast aggregate is not less than $7,500,000,000. This enormous taxation followed a civil conflict that had greatly impaired our aggregate wealth and had made a prompt reduction of expenses indispensable. It was aggravated by most unscientific and ill-adjusted methods of taxation, that increased the sacrifices of the people far beyond the receipts of the Treasury. It was aggravated, moreover, by a financial policy which tended to diminish the energy, skill, and economy of production and the frugality of private consumption, and induced miscalculation in business and unremunerative use of capital and labor.

Even in prosperous times the daily wants of industrious communities press closely upon their daily earnings. The margin of possible national savings is at best a small percentage of national earnings. Yet now for these eleven years governmental consumption has been a larger portion of the national earnings than the whole people can possibly save, even in prosperous times, for all new investments. The consequences of these errors are now a present public calamity. But they were never doubtful, never invisible. They were necessary and inevitable, and were foreseen and depicted when the waves of that fictitious prosperity ran highest. In a speech made by me on the 24th of September, 1868, it was said of these taxes: —

"They bear heavily upon every man's income, upon every industry and every business in the country; and year by year they are destined to press still more heavily, unless we arrest the system that

gives rise to them. It was comparatively easy, when values were doubling under repeated issues of legal-tender paper money, to pay out of the froth of our growing and apparent wealth these taxes; but when values recede and sink toward their natural scale, the tax-gatherer takes from us not only our income, not only our profits, but also a portion of our capital. . . . I do not wish to exaggerate or alarm; I simply say that we cannot afford the costly and ruinous policy of the Radical majority of Congress. We cannot afford that policy toward the South. We cannot afford the magnificent and oppressive centralism into which our government is being converted. We cannot afford the present magnificent scale of taxation."

To the Secretary of the Treasury I said, early in 1865: —

"There is no royal road for a government more than for an individual or a corporation. What you want to do now is to cut down your expenses and live within your income. I would give all the legerdemain of finance and financiering — I would give the whole of it for the old, homely maxim, 'Live within your income.'"

This reform will be resisted at every step; but it must be pressed persistently. We see to-day the immediate representatives of the people in one branch of Congress, while struggling to reduce expenditures, compelled to confront the menace of the Senate and the Executive that unless the objectionable appropriations be consented to, the operations of the Government thereunder shall suffer detriment or cease. In my judgment an amendment of the Constitution ought to be devised separating into distinct bills the appropriations for the various departments of the public service, and excluding from each bill all appropriations for other objects and all independent legislation. In that way alone can the revisory power of each of the two Houses and of the Executive be preserved and exempted from the moral duress which often compels assent to objectionable appropriations, rather than stop the wheels of the Government.

An accessory cause enhancing the distress in business is to be found in the systematic and insupportable misgovernment imposed on the States of the South. Besides the ordinary

effects of ignorant and dishonest administration, it has inflicted upon them enormous issues of fraudulent bonds, the scanty avails of which were wasted or stolen, and the existence of which is a public discredit, tending to bankruptcy or repudiation. Taxes, generally oppressive, in some instances have confiscated the entire income of property, and totally destroyed its marketable value. It is impossible that these evils should not react upon the prosperity of the whole country.

The South.

The nobler motives of humanity concur with the material interests of all in requiring that every obstacle be removed to a complete and durable reconciliation between kindred populations once unnaturally estranged, on the basis recognized by the St. Louis platform, of the "Constitution of the United States, with its amendments, universally accepted as a final settlement of the controversies which engendered civil war."

But, in aid of a result so beneficent, the moral influence of every good citizen, as well as every governmental authority, ought to be exerted, not alone to maintain their just equality before the law, but likewise to establish a cordial fraternity and good-will among citizens, whatever their race or color, who are now united in the one destiny of a common self-government. If the duty shall be assigned to me, I should not fail to exercise the powers with which the laws and the Constitution of our country clothe its chief magistrate, — to protect all its citizens, whatever their former condition, in every political and personal right.

"Reform is necessary," declares the St. Louis Convention, "to establish a sound currency, restore the public credit, and maintain the national honor;" and it goes on to "demand a judicious system of preparation by public economies, by official retrenchments, and by wise finance, which shall enable the nation soon to assure the whole world of its perfect ability and its perfect readiness to meet any of its promises at the call of the creditor entitled to payment."

Currency reform.

The object demanded by the Convention is a resumption of specie payments on the legal-tender notes of the United States. That would not only "restore the public credit" and "maintain the national honor," but it would "establish a sound currency" for the people. The methods by which this object is to be pursued and the means by which it is to be attained, are disclosed by what the Convention demanded for the future and by what it denounced in the past.

Bank-note resumption.

Resumption of specie payments by the Government of the United States on its legal-tender notes would establish specie payments by all the banks on all their notes. The official statement made on the 12th of May shows that the amount of the bank-notes was three hundred millions, less twenty millions held by the banks themselves. Against these two hundred and eighty millions of notes the banks held one hundred and forty-one millions of legal-tender notes, or a little more than 50 per cent of their amount; but they also held on deposit in the Federal Treasury, as security for these notes, bonds of the United States worth in gold about three hundred and sixty millions, available and current in all the foreign money-markets. In resuming, the banks, even if it were possible for all their notes to be presented for payment, would have five hundred millions of specie funds to pay two hundred and eighty millions of notes without contracting their loans to their customers or calling on any private debtor for payment. Suspended banks undertaking to resume have usually been obliged to collect from needy borrowers the means to redeem excessive issues and to provide reserves. A vague idea of distress is therefore often associated with the process of resumption; but the conditions which caused distress in those former instances do not now exist. The Government has only to make good its own promises, and the banks can take care of themselves without distressing anybody. The Government is therefore the sole delinquent.

The amount of the legal-tender notes of the United States now outstanding is less than three hundred and seventy

millions of dollars, besides thirty-four millions of dollars of fractional currency. How shall the Government make these notes at all times as good as specie?

Legal-tender resumption.

It has to provide, in reference to the mass which would be kept in use by the wants of business, a central reservoir of coin, adequate to the adjustment of the temporary fluctuations of international balances, and as a guaranty against transient drains artificially created by panic or by speculation. It has also to provide for the payment in coin of such fractional currency as may be presented for redemption, and such inconsiderable portions of the legal tenders as individuals may, from time to time, desire to convert for special use or in order to lay by in coin their little stores of money.

Resumption not difficult.

To make the coin now in the Treasury available for the objects of this reserve, gradually to strengthen and enlarge that reserve, and to provide for such other exceptional demands for coin as may arise, does not seem to me a work of difficulty. If wisely planned and discreetly pursued, it ought not to cost any sacrifice to the business of the country; it should tend, on the contrary, to a revival of hope and confidence. The coin in the Treasury on the 30th of June, including what is held against coin certificates, amounted to nearly seventy-four millions. The current of precious metals which has flowed out of our country for the eleven years from July 1, 1865, to June 30, 1876, averaging nearly seventy-six millions a year, was eight hundred and thirty-two millions in the whole period, of which six hundred and seventeen millions were the product of our own mines. To amass the requisite quantity by intercepting from the current flowing out of the country, and by acquiring from the stocks which exist abroad, without disturbing the equilibrium of foreign money markets, is a result to be easily worked out by practical knowledge and judgment.

With respect to whatever surplus of legal tenders the wants of business may fail to keep in use, which, in order to save

interest, will be returned for redemption, they can either be paid or they can be funded. Whether they continue as currency, or be absorbed into the vast mass of securities held as investments, is merely a question of the rate of interest they draw. Even if they were to remain in their present form, and the Government were to agree to pay on them a rate of interest making them desirable as investments, they would cease to circulate, and would take their place with Government, State, municipal, and other corporate and private bonds, of which thousands of millions exist among us. In the perfect ease with which they can be changed from currency into investments lies the only danger to be guarded against in the adoption of general measures intended to remove a clearly ascertained surplus; that is, the withdrawal of any which are not a permanent excess beyond the wants of business. Even more mischievous would be any measure which affects the public imagination with the fear of an apprehended scarcity. In a community where credit is so much used, fluctuations of values and vicissitudes in business are largely caused by the temporary beliefs of men even before those beliefs can conform to ascertained realities.

Amount of necessary currency.

The amount of the necessary currency at a given time cannot be determined arbitrarily, and should not be assumed on conjecture. That amount is subject to both permanent and temporary changes. An enlargement of it, which seemed to be durable, happened at the beginning of the civil war by a substituted use of currency in place of individual credits. It varies with certain states of business. It fluctuates, with considerable regularity, at different seasons of the year. In the autumn, for instance, when buyers of grain and other agricultural products begin their operations, they usually need to borrow capital or circulating credits by which to make their purchases, and want these funds in currency capable of being distributed in small sums among numerous sellers. The additional need of currency at such times is 5 or more per cent of the whole volume; and if a surplus beyond what is required for ordinary use does not happen to

have been on hand at the money centres, a scarcity of currency ensues, and also a stringency in the loan market.

It was in reference to such experiences that, in a discussion of this subject in my Annual Message to the New York Legislature of Jan. 5, 1875, the suggestion was made that "the Federal Government is bound to redeem every portion of its issues which the public do not wish to use. Having assumed to monopolize the supply of currency and enacted exclusions against everybody else, it is bound to furnish all which the wants of business require. . . . The system should passively allow the volume of circulating credits to ebb and flow according to the ever-changing wants of business. It should imitate as closely as possible the natural laws of trade, which it has superseded by artificial contrivances." And in a similar discussion in my Message of Jan. 4, 1876, it was said that resumption should be effected "by such measures as would keep the aggregate amount of the currency self-adjusting during all the process, without creating at any time an artificial scarcity, and without exciting the public imagination with alarms which impair confidence, contract the whole large machinery of credit, and disturb the natural operations of business."

"Public economies, official retrenchments, and wise finance" are the means which the St. Louis Convention indicates as provision for reserves and redemptions. The best resource is a reduction of the expenses of the Government below its income; for that imposes no new charge on the people. If, however, the improvidence and waste which have conducted us to a period of falling revenues oblige us to supplement the results of economies and retrenchments by some resort to loans, we should not hesitate. The Government ought not to speculate on its own dishonor in order to save interest on its broken promises, — promises which it still compels private dealers to accept at a fictitious par. The highest national honor is not only right, but would prove profitable. Of the public debt nine hundred and eighty-five millions bear interest at 6 per cent in gold, and seven hundred and twelve

Means of resumption.

millions at 5 per cent in gold. The average interest is 5.58 per cent.

A financial policy which should secure the highest credit, wisely availed of, ought gradually to obtain a reduction of 1 per cent in the interest on most of the loans. A saving of 1 per cent on the average would be seventeen millions a year in gold. That saving, regularly invested at $4\frac{1}{2}$ per cent, would in less than thirty-eight years extinguish the principal. The whole seventeen hundred millions of funded debt might be paid by this saving alone, without cost to the people.

Proper time for resumption.

The proper time for resumption is the time when wise preparations shall have ripened into a perfect ability to accomplish the object with a certainty and ease that will inspire confidence and encourage the reviving of business. The earliest time in which such a result can be brought about is the best. Even when the preparations shall have been matured, the exact date would have to be chosen with reference to the then existing state of trade and credit operations in our own country, the course of foreign commerce, and the condition of the exchanges with other nations. The specific measures and the actual date are matters of detail having reference to ever-changing conditions; they belong to the domain of practical administrative statesmanship. The captain of a steamer, about starting from New York to Liverpool, does not assemble a council over his ocean chart and fix an angle by which to lash the rudder for the whole voyage. A human intelligence must be at the helm to discern the shifting forces of the waters and the winds; a human hand must be on the helm to feel the elements day by day, and guide to a mastery over them.

Preparations for resumption.

Such preparations are everything. Without them a legislative command fixing a day, an official promise fixing a day, are shams. They are worse; they are a snare and a delusion to all who trust them. They destroy all confidence among thoughtful men, whose judgment will at last sway public opinion. An attempt to act on such a

command or such a promise without preparation would end in a new suspension. It would be a fresh calamity, prolific of confusion, distrust, and distress.

The Act of Jan. 14, 1875.

The Act of Congress of the 14th of January, 1875, enacted that on and after the 1st of January, 1879, the Secretary of the Treasury shall redeem in coin the legal-tender notes of the United States on presentation at the office of the Assistant-Treasurer in the city of New York. It authorized the Secretary "to prepare and provide for" such resumption of specie payments by the use of any surplus revenues not otherwise appropriated, and by issuing in his discretion certain classes of bonds.

More than one and a half of the four years have passed. Congress and the President have continued ever since to unite in acts which have legislated out of existence every possible surplus applicable to this purpose. The coin in the Treasury claimed to belong to the Government had on the 30th of June fallen to less than forty-five millions of dollars, as against fifty-nine millions on the 1st of January, 1875; and the availability of a part of that sum is said to be questionable. The revenues are falling faster than appropriations and expenditures are reduced, leaving the Treasury with diminishing resources. The Secretary has done nothing under his power to issue bonds.

The legislative command, the official promise fixing a day for resumption have thus far been barren. No practical preparations toward resumption have been made. There has been no progress; there have been steps backward.

There is no necromancy in the operations of government; the homely maxims of every-day life are the best standards for its conduct. A debtor who should promise to pay a loan out of surplus income, yet be seen every day spending all he could lay his hands on in riotous living, would lose all character for honesty and veracity. His offer of a new promise or his profession as to the value of the old promise, would alike provoke derision.

The St. Louis platform denounces the failure for eleven years to make good the promise of the legal-tender notes. It denounces the omission to accumulate "any reserve for their redemption." It denounces the conduct "which during eleven years of peace has made no advances toward resumption, no preparations for resumption, but instead has obstructed resumption by wasting our resources and exhausting all our surplus income; and while professing to intend a speedy return to specie payments, has annually enacted fresh hindrances thereto." And having first denounced the barrenness of the promise of a day of resumption, it next denounces that barren promise as "a hindrance" to resumption. It then demands its repeal, and also demands the establishment of "a judicious system of preparation" for resumption. It cannot be doubted that the substitution of "a system of preparation" without the promise of a day, for the worthless promise of a day without "a system of preparation" would be the gain of the substance of resumption in exchange for its shadow.

Resumption plan of the St. Louis platform.

Nor is the denunciation unmerited of that improvidence which, in the eleven years since the peace, has consumed forty-five hundred millions of dollars, and yet could not afford to give the people a sound and stable currency. Two and a half per cent on the expenditures of these eleven years, or even less, would have provided all the additional coin needful to resumption.

The distress now felt by the people in all their business and industries, though it has its principal cause in the enormous waste of capital occasioned by the false policies of our Government, has been greatly aggravated by the mismanagement of the currency. Uncertainty is the prolific parent of mischiefs in all business. Never were its evils more felt than now. Men do nothing, because they are unable to make any calculations on which they can safely rely; they undertake nothing, because they fear a loss in everything they would attempt: they stop and wait. The merchant dares

Relief to business distress.

not buy for the future consumption of his customers. The manufacturer dares not make fabrics which may not refund his outlay. He shuts his factory and discharges his workmen. Capitalists cannot lend on security they consider safe, and their funds lie almost without interest. Men of enterprise who have credit, or securities to pledge, will not borrow. Consumption has fallen below the natural limits of a reasonable economy. Prices of many things are under their range in frugal specie-paying times before the civil war. Vast masses of currency lie in the banks unused. A year and a half ago the legal tenders were at their largest volume, and the twelve millions since retired have been replaced by fresh issues of fifteen millions of bank-notes. In the mean time the banks have been surrendering about four millions a month, because they cannot find a profitable use for so many of their notes.

The public mind will no longer accept shams; it has suffered enough from illusions. An insincere policy increases distrust; an unstable policy increases uncertainty. The people need to know that the Government is moving in the direction of ultimate safety and prosperity, and that it is doing so through prudent, safe, and conservative methods, which will be sure to inflict no new sacrifice on the business of the country. Then the inspiration of new hope and well-founded confidence will hasten the restoring processes of nature, and prosperity will begin to return.

The St. Louis Convention concludes its expression in regard to the currency by a declaration of its convictions as to the practical results of the system of preparations it demands. It says: "We believe such a system, well devised, and above all intrusted to competent hands for execution, creating at no time an artificial scarcity of currency, and at no time alarming the public mind into a withdrawal of that vaster machinery of credit by which 95 per cent of all business transactions are performed, — a system open, public, and inspiring general confidence, — would, from the day of its adoption, bring healing on its wings to all our harassed industries, set in motion the

wheels of commerce, manufactures, and the mechanic arts, restore employment to labor, and renew in all its natural sources the prosperity of the people."

The Government of the United States, in my opinion, can advance to a resumption of specie payments on its legal-tender notes by gradual and safe processes tending to relieve the present business distress. If charged by the people with the administration of the executive office, I should deem it a duty so to exercise the powers with which it has been or may be invested by Congress as best and soonest to conduct the country to that beneficent result.

The Convention justly affirms that reform is necessary in the civil service, necessary to its purification, necessary to its economy and its efficiency, necessary in order that the ordinary employment of the public business may not be "a prize fought for at the ballot-box, a brief reward of party zeal, instead of posts of honor assigned for proved competency and held for fidelity in the public employ." The Convention wisely added that "reform is necessary even more in the higher grades of the public service. President, Vice-President, judges, senators, representatives, Cabinet officers, these and all others in authority are the people's servants; their offices are not a private perquisite, they are a public trust." Civil service reform.

Two evils infest the official service of the Federal Government. One is the prevalent and demoralizing notion that the public service exists not for the business and benefit of the whole people, but for the interest of the office-holders, who are in truth but the servants of the people. Under the influence of this pernicious error public employments have been multiplied, the numbers of those gathered into the ranks of office-holders have been steadily increased beyond any possible requirement of the public business, while inefficiency, peculation, fraud, and malversation of the public funds, from the highest places of power to the lowest, have overspread the whole service like a leprosy.

The other evil is the organization of the official class into a body of political mercenaries governing the caucuses and dictating the nominations of their own party, and attempting to carry the elections of the people by undue influence and by immense corruption-funds systematically collected from the salaries or fees of office-holders. The official class in other countries, sometimes by its own weight, and sometimes in alliance with the army, has been able to rule the unorganized masses, even under universal suffrage. Here it has already grown into a gigantic power, capable of stifling the inspirations of a sound public opinion and of resisting an easy change of administration, until misgovernment becomes intolerable, and public spirit has been stung to the pitch of a civic revolution.

The first step in reform is the elevation of the standard by which the appointing power selects agents to execute official trusts. Next in importance is a conscientious fidelity in the exercise of the authority to hold to account and displace untrustworthy or incapable subordinates. The public interest in an honest, skilful performance of official trust must not be sacrificed to the usufruct of the incumbents.

After these immediate steps, which will insure the exhibition of better examples, we may wisely go on to the abolition of unnecessary offices; and, finally, to the patient, careful organization of a better civil service system under the tests, wherever practicable, of proved competency and fidelity.

While much may be accomplished by these methods, it might encourage delusive expectations if I withheld here the expression of my conviction that no reform of the civil service in this country will be complete and permanent until its chief magistrate is constitutionally disqualified for re-election; experience having repeatedly exposed the futility of self-imposed restrictions by candidates or incumbents. Through this solemnity only can he be effectually delivered from his greatest temptation to misuse the power and patronage with which the Executive is necessarily charged.

Educated in the belief that it is the first duty of a citizen of

Conclusion.

the Republic to take his fair allotment of care and trouble in public affairs, I have for forty years as a private citizen fulfilled that duty. Though occupied in an unusual degree during all that period with the concerns of government, I have never acquired the habit of official life. When, a year and a half ago, I entered upon my present trust, it was in order to consummate reforms to which I had already devoted several of the best years of my life. Knowing as I do, therefore, from fresh experience how great the difference is between gliding through an official routine and working out a reform of systems and policies, it is impossible for me to contemplate what needs to be done in the Federal administration without an anxious sense of the difficulties of the undertaking. If summoned by the suffrages of my countrymen to attempt this work, I shall endeavor, with God's help, to be the efficient instrument of their will.

LIV.

ADDRESS OF WELCOME TO THE SARATOGA CONFERENCE.[1]

Gentlemen of the Conference of Charities, — As chief magistrate of the State of New York, it is my pleasing office to welcome you to this charming and fashionable resort, which is fast becoming the shrine of political, social, and scientific pilgrimages. Two great conventions, forming an essential share of the voluntary machinery by which the competitions of parties are carried on, and elective government over a continent is made possible, have recently held their sessions in this place; and to-day your Conference, connected with the Association for the Advancement of Social Science, brings to this same delightful retreat a class of men with very different objects, not less important, more comprehensive in their scope, and more permanent in their consequences. It brings here gentlemen distinguished for their learning, for their accomplishments, and for their benevolence. A conference of charities! What a noble rivalry is implied in these words. You are here, not to further your own interests, not even to promote the material well-being of those communities which you represent; but to consider what can best be done to cure the wounds and maladies of society. What has thus far been accomplished toward removing the evils of pauperism, crime, and insanity will be disclosed to you when the regular reports of the committees

[1] Delivered in the Town Hall at Saratoga, Sept. 5, 1876.

charged with these subjects shall come before you. I will not anticipate them or trench upon their domain. My office is simply to express to you the earnest sympathy, the strong approval, and the spirit of co-operation of this great commonwealth, which I represent to-day.

In the past three centuries the progress of science has been something marvellous. In astronomy, geology, physics, and chemistry, and in all of those departments of science which in modern phrase are comprehended under the name of "biology," the achievements have been so vast that the earlier discoverers in science would have to go through a fresh novitiate to understand what are now ascertained facts. Kepler and Newton would scarcely comprehend the revelations of the modern instruments that have been employed to discover the interior constitution of the heavenly bodies. While they could merely watch and define the general movements and explore the surfaces of these bodies, it is given to us to discern their mysteries. Priestley, Lavoisier, and even Davy would have to go through new training to enable them to be called chemists. In other departments of science the achievements have been equally surprising.

By what means, by what methods, have these great results been accomplished? Was it by patient study, by diligent experiment, by researches persistently carried into the secret working-places of Nature? You will answer, it was not by these means alone. It was in a large degree by the application of scientific analysis and scientific methods to these inquiries. Now you propose, gentlemen, to extend the application of this method still farther, and to apply the same implements and modes of inquisition to the problems of human society. I congratulate you that, in doing it, you do it under the auspices of the Society for the Promotion of Social Science. I feel quite sure that you must derive instruction and aid — at least that you will absorb much that is interesting and that is valuable — from intercourse with the intelligent, cultivated gentlemen who belong to that Association. You assume that the complex

phenomena of society, its grand tides of movement, its successions of changes, growth and decay of populations, mortality, pauperism, crime, are capable of being analyzed, studied, and reduced to formulas. Now, gentlemen, it seems to me that no more interesting, no more important object of investigation could be presented to the human mind. I am quite sure that the application of the same philosophy which has achieved such grand results elsewhere will astonish you, will astonish every one, by the results which it will attain in this new department to which it will be applied. Even those most uncertain things that depend on the human will are capable of being studied, of being analyzed, of being classified, and their results stated.

Human life has been held forth in the sacred writings and in all ages as the most uncertain thing possible; and yet, if you will take a large number of individual lives and group them, you can compute within a fraction their average duration. In the great metropolis in which my home is, and its immediate suburbs, there are something like half a million of families. It would be scarcely probable that any one of those families should know what food they will have upon their table to-morrow; and yet every one goes to market without concern, without plan, even without purpose. They find everything they desire to supply their wants or gratify their tastes, and nothing of any importance is left at the end of the day. All over this continent, in every part of it, myriads of busy hands are preparing supplies for the great mart of traffic and centre of population. In the immediate vicinity the articles of heavy transport and small value are produced; far off, in the blue-grass region of Kentucky and Tennessee and on the broad savannas of Texas, is being prepared the beef which every day feeds this immense population. And in all these tens of thousands of producers there is no concert, no plan. No man knows what his neighbors are to produce, no man knows who will buy the products of his industry; and yet all the results of their production are sent forward to the market. All are in demand, and all find every day an adequate sale.

Take even a broader field. Each one of our forty-five millions of people is choosing what he desires to possess, to consume, to enjoy of the products of foreign climes. Each one is proposing what he shall take from his own labor to pay for what he purchases from abroad. There have been those who have kept awake nights for fear that we should buy everything from abroad and sell nothing, and therefore rapidly become bankrupt.

[Addressing D. A. Wells, President of the Social Science Association, Governor Tilden said:] I believe you, Mr. President, have been able to save yourself and rescue many others from that apprehension. You have seen that it is not necessary for two or three hundred wise men in the city of Washington to decide and specify what we shall sell and what we shall buy in order to save us from the calamity which would otherwise fall upon us.

Gentlemen, how is it that this great multitude of individual wills and individual tastes, acting separately and independently, find themselves averaged and compensated until everything tends to and everything results in an equilibrium of forces? It is that the Divine Being has impressed upon everything order, method, and law. Even the most divergent, even the most uncertain, even those things in the individual taste which we cannot foresee or calculate upon at all, when we group them in large masses reduce themselves to intelligible forms. Now I undersand that what you propose to do is to apply this same method of investigation to pauperism, to crime, to insanity, and to all those cases where governmental interference or governmental intelligence is deemed to be necessary. I do not doubt, if you will study these subjects with attention, diligence, and patience, that you will prove great benefactors, not only of this community, but also of the whole country. I cannot conclude, however, without one word of warning, and that is this.

The emotional and sympathetic mind, seeking out relief for evil distinctly seen and strongly felt, looking perhaps upon a specific evil with a view somewhat out of proportion to its

relation to all the interests of society, and going to the public treasury for a fund from which to gratify its humane and charitable instincts, and not restrained by any consideration limiting its disposition or its power, no doubt tends sometimes to extravagance in the public charities. I had occasion last year and the year before to object to the magnificence of the public buildings being erected in this State for these purposes; and the caution I wish to suggest to you to-day is this, — that while all the Heaven-born, God-given sentiments of humanity may fairly have their scope in operating upon your minds and your hearts to impel you to relieve evils of this character which exist among us, you want, if possible, to unite in your action, prudence, caution, frugality, and the economy of the thorough man of business. In the interest of your charities you should see that the funds consecrated to them be not exhausted or consumed without the greatest possible results being derived therefrom; in the interest of society you should see that the burdens for these objects do not become intolerable. While we exercise every sentiment of humanity, — while we do all in our power to relieve misfortune, to overcome evils, to apply discipline, and to enforce reformation, — at the same time we must bear in mind that the industrious millions who keep out of the poorhouses and penitentiaries are also entitled to the consideration and the care of the Government. We must see to it that we do not foster, as in a hotbed, the very evils which we seek to remove; we must see to it that our methods are well devised, are prudent, and are effective. And if, as has sometimes been said in applying the method belonging to the study of the physical sciences to social problems, — if, as has been said, that method in its application to the physical sciences has tended to nurture too much reliance on human intellect, and to draw us away from a natural dependence on what is higher and better, — when we come to apply this method to social life, when we come to contemplate minutely, as with a microscope, the wrongs, the frailties, and the weaknesses of humanity, we should rectify that tendency, and

permit our minds to be led through these laws up to the great Source from which all laws are derived. Gentlemen of the Conference, for and on behalf of the people of the State of New York, in your grand, noble, and benevolent work, I bid you God speed.

LV.

WAR CLAIMS AND THE REBEL DEBT.

New York, Oct. 24, 1876.

To the Hon. Abram S. Hewitt.

Sir, — I have received your letter informing me that Republicans high in authority are publicly representing that "the South *desire*, not without hope," to obtain payment for losses by the late war, and to have "provision made for the rebel debt and for the losses of slaves." As the payment of such losses and claims was not deemed important enough to deserve the notice of either Convention at the time it was held, you also ask me to state my views in regard to their recognition by the Government. Though disposed myself to abide by the issue as made up already, I have no hesitation to comply with your request.

The Fourteenth Amendment of the Constitution expressly provides as follows, —

"The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void."

This amendment has been repeatedly approved and agreed to by Democratic State conventions of the South. It was

unanimously adopted as a part of the platform of the Democratic National Convention at St. Louis on the 28th of June, and was declared by that platform to be "universally accepted as a final settlement of the controversies that engendered civil war."

My own position on this subject had been previously declared on many occasions, and particularly in my first Annual Message of Jan. 5, 1875. In that document I stated that the Southern people were bound by the Thirteenth, Fourteenth, and Fifteenth Constitutional Amendments; that they had "joined at national conventions in the nomination of candidates and in the declaration of principles and purposes which form an authentic acceptance of the results of the war embodied in the last three amendments to the organic law of the Federal Union, and that they had, by the suffrages of all their voters at the last national election, completed the proof that now they only seek to share with us and to maintain the common rights of American local self-government in a fraternal union, under the old flag, with 'one Constitution and one destiny.'"

I declared at the same time that the questions settled by the war are never to be reopened. "The adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Federal Constitution closed one great era in our politics. It marked the end forever of the system of human slavery and of the struggles that grew out of that system. These amendments have been conclusively adopted, and they have been accepted in good faith by all political organizations and the people of all sections. They close the chapter; they are and must be final; all parties hereafter must accept and stand upon them; and henceforth our politics are to turn upon questions of the present and the future, and not upon those of the settled and final past."

Should I be elected President, the provisions of the Fourteenth Amendment will, so far as depends on me, be maintained, executed, and enforced in perfect and absolute good faith.

No rebel debt will be assumed or paid. No claim for the loss or emancipation of any slave will be allowed. No claim for any loss or damage incurred by disloyal persons, arising from the late war, whether covered by the Fourteenth Amendment or not, will be recognized or paid. The cotton tax will not be refunded. I shall deem it my duty to veto every bill providing for the assumption or payment of any such debts, losses, damages, claims, or for the refunding of any such tax.

The danger to the National Treasury is not from claims of persons who aided the rebellion, but from claims of persons residing in the Southern States, or having property in those States, who were, or pretended to be, or who for the sake of establishing claims now pretend to have been, loyal to the Government of the Union. Such claims, even of loyal persons, where they accrue from acts caused by the operations of war, have been disowned by the public law of all civilized nations, condemned by the adjudications of the Supreme Court of the United States, and only find any status by force of specific legislation of Congress. These claims have become stale, and are often tainted with fraud. They are nearly always owned in whole or in part by claim agents, by speculators, or by lobbyists, who have no equity against the taxpayers or the public. They should in all cases be scrutinized with jealous care.

The calamities to individuals which were inflicted by the late war are for the most part irreparable. The Government cannot recall to life the million of our youth who went to untimely graves, nor compensate the sufferings or sorrow of their relatives or friends. It cannot readjust between individuals the burdens of taxation hitherto borne, or of debts incurred to sustain the Government which are yet to be paid. It cannot apportion anew among our citizens the damages or losses incident to military operations, or resulting in every variety of form from its measures for maintaining its own existence. It has no safe general rule but to let bygones be bygones; to turn from the dead past to a new and better future; and on that basis to

assure peace, reconciliation, and fraternity between all sections, classes, and races of our people, to the end that all the springs of our productive industries may be quickened, and a new prosperity created, in which the evils of the past shall be forgotten.

Very respectfully yours,

SAMUEL J. TILDEN.

LVI.

When Congress convened in the winter of 1876–1877, with the duty of counting the electoral votes for President and Vice-President, it appeared that there were 184 uncontested electoral votes for Samuel J. Tilden for President and for Thomas A. Hendricks for Vice-President, 165 uncontested electoral votes for Rutherford B. Hayes for President and William H. Wheeler for Vice-President, and 20 votes in dispute. One hundred and eighty-five votes were necessary for a choice; consequently one additional vote to Tilden and Hendricks would have elected them, while twenty additional votes were required for the election of the rival candidates. The whole election therefore depended upon one electoral vote. This gave to the mode of counting the vote an importance which it had never possessed at any of the twenty-one previous elections in the history of our Government.

The provisions of the Constitution relating to the mode of counting the vote were sufficiently vague to furnish a pretext for some diversity of opinion upon the subject where there was such a tremendous temptation to find one; and the doctrine was freely advanced by partisans of the Republican candidates that in case the two Houses could not agree, the final counting would devolve upon the President of the Senate. That they would not agree was assumed; a majority of the Senate being Republicans, and a majority of the Lower House being Democrats. As the President of the Senate was a Republican and a strong partisan, it became important to supplement the somewhat vague provisions of the Constitution by an appeal to the usages and traditions of the Government, for the purpose of deducing from them such general rules on this subject as had proved of universal acceptation. To this task Mr. Tilden addressed him-

self as soon as the exigency arose. He caused the records of Congress to be explored and all the debates relating to the counting of the electoral votes, from the first election of Washington in 1789 to the election of Grant in 1872, to be copied out; and then proceeded to summarize the lessons of these several precedents, which, with the debates, were printed and placed on the table of each member of Congress before any final action had been taken.[1] In his "Analytical Introduction," which follows, Mr. Tilden demonstrated: —

1. That the exclusive jurisdiction of the two Houses to count the electoral votes by their own servants and under such instructions as they might deem proper to give, has been asserted from the beginning of the Government.

2. That the President of the Senate, although he has uniformly, in person or by some substitute designated by the Senate, performed the constitutional duty of opening the electoral votes, has never in a single instance attempted to go a step beyond that narrow and limited function; has in no instance attempted to determine what votes he should open; but has opened all and submitted them to the action of the two Houses, unless required to omit particular votes by their concurrent orders.

3. That the two Houses have not only always exercised exclusively the power to count the electoral vote in such manner and by such agents as they might choose to do it, but they have exercised the right to fix and establish the methods of procedure by standing rules.

The demonstration was so plain, and the argument from precedent so irresistible, that the project of leaving the electoral votes to be counted by the President of the Senate was abandoned, and a new device employed, in which the concurrence of the two Houses was secured.

[1] The Presidential Counts: A Complete Official Record of the Proceedings of Congress at the Counting of the Electoral Votes in all the Elections of President and Vice-President of the United States, together with all Congressional Debates incident thereto or to Proposed Legislation upon that Subject; with an Analytical Introduction. New York: D. Appleton & Co., 1877.

WHO COUNTS THE ELECTORAL VOTE?

THERE have been twenty-one Presidential elections under our Federal Constitution; but until now the methods of canvassing the electoral votes at the seat of government have never presented questions of much practical importance, except so far as they established precedents for the future.[1]

The main result of the Federal canvass, whenever there has been an election by the people, has always been known in advance of the meeting of Congress; and though questions as to the authenticity or validity of votes have repeatedly arisen, their solution has in no instance hitherto made any practical difference with the result.

Now, for the first time, the disputed votes may decide the result of the election. There are one hundred and eighty-four

[1] The Congress of the Confederation, on the 28th of September, 1787, directed that the Constitution, with certain resolutions adopted by the Convention on the 17th of September, 1787, be transmitted to the legislatures of the several States, to be submitted to conventions of the people thereof. One of those resolutions is in the following words: —

"*Resolved*, That it is the opinion of this Convention that as soon as the conventions of nine States shall have ratified this Constitution, the United States, in Congress assembled, should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution; that after such publication the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes for President; and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute the Constitution."

uncontested votes on one side, one hundred and sixty-five on the other, and twenty in dispute. It will be necessary for the constituted authorities, in some instances, to pass upon the authenticity or validity of duplicate electoral certificates from the same States. Where the authority lies that is to decide such an issue has thus become a question of the gravest import; for upon it may depend not merely the control of this government during the next Presidential term, but the perpetuity of our political institutions and the confidence of our people and of all mankind in the elective system and in the principle of popular sovereignty.

The provisions of the Constitution furnish a pretext for some diversity of opinion upon this subject, especially when it is investigated under the glamour of fervid partisanship, and when the choice of candidates may depend upon the interpretation those provisions receive. The Constitution provides that the certificates of the votes given by the electors, which are transmitted to the seat of government, shall be delivered to the President of the Senate, and that the President of the Senate shall, in the presence of the two Houses of Congress, open all the certificates, and that "they shall then be counted."

By whom the votes shall be counted; how far the counting is a simple matter of enumeration; and how far it involves the additional duty of determining the authenticity and validity of the certificates presented, — are questions in the solution of which the practice of the Government is our best guide. Attempts have been made at various times to secure supplementary legislation to meet the exigency which is now presented to the country; but none of these efforts were fortunate enough to unite a majority of the Federal legislature in its favor. The difficulty now has to be met under aggravated disadvantages. The two Houses are divided in their preferences for the respective candidates. Questions will be raised as to the authenticity or validity of some of the electoral certificates to be presented, upon the reception or rejection of which

the result of the election may finally depend. In view of the difficulties which our legislators will experience, with two great armies of more or less heated partisans behind them, in legislating upon this subject with suitable impartiality, it is the disposition and it will be the manifest duty of every patriotic member of our Federal legislature to adhere as closely as possible to the precedents which have been sanctioned by time and continuous usage. A less auspicious moment for engaging in experiments and for introducing new methods of canvassing the electoral vote could scarcely be imagined. The wisest devices which have not the sanction of precedent would now fall a prey to merited suspicion and distrust.

It is in deference to this conviction that the following compilation is submitted to the public. It is intended to embrace a perfect and complete record of the canvass in the two Houses of Congress, with all the debates to which they have given rise, taken from the official reports. Scattered as the originals are, through some forty or fifty cumbrous and not readily accessible volumes, it would be a task which very few could or would undertake, to make themselves even tolerably familiar with the way in which this quadrennial duty of the two Houses of Congress has been discharged hitherto.

By the aid of this compilation, however, no one interested in the subject will have a good excuse for remaining in ignorance of the precedents which have been established, and in accordance with which it is to be presumed all proceedings at this final canvass of the electoral vote cast in 1876 will be conducted. For the convenience of those who may have occasion to investigate this subject, the more important usages or precedents which the practice of nearly a century has established in regard to the methods of opening, counting, and announcing the result of the electoral votes for President and Vice-President of the United States will be here recapitulated.

The Constitution provides that the electors of President and Vice-President shall "transmit" the certificates of their votes to the seat of the government, "directed to the President

of the Senate;" and that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

Temporary expedient for the first counting in 1789.

At the first organization of the Government, in 1789, there being no President of the Senate, a provisional arrangement was necessary. The votes had been transmitted to the secretary of the Congress of the old Confederation. The senators, on assembling in conformity to the suggestion made by a resolution of the Convention of 1787, chose a President "for the sole purpose of opening the certificates and counting the votes" of the electors, appointed one teller, and sent a message informing the House of their action and their readiness to proceed to the count of the votes. The House appointed two tellers, and assembled with the Senate. The resolution of the Senate, while declaring that its special President had been appointed for the sole purpose of opening the certificates and counting the electoral votes, did not designate the person or persons by whom the votes should be counted. It might have been their intention that while the President of the Senate should open the packages, the two Houses when convened should count the votes themselves, or determine by whom they should be counted. This would reflect completely the sense of the resolution which stated the purposes of the meeting, but not the agents who were to execute those purposes. The President of the Senate, however, reported to the two Houses that they had met and that he had opened and counted the votes. The election of Washington as President was unanimous, and everything was done rather as a formality, and without debate as without deliberation. The counting involved nothing beyond a mere computation; and even that meagre power, so far as exercised by the special President, was not assumed as an official right, but was derived from an express resolution of the Senate and the assent of the House. The counting was done under a special appointment for that sole purpose before the Senate had elected its President

pro tempore. In the nature of the case, what was done on that occasion can have no authority as a precedent.

Regular mode of procedure established in 1793.

At the second election, in 1793, the two Houses established a regular procedure for the counting of the electoral votes, — a procedure which has been substantially followed ever since. They assumed and exercised the power of prescribing by concurrent resolutions of the two Houses a mode of counting.

That mode was devised and reported by a joint committee of the two Houses. The committee was raised under concurrent resolutions charging them, among other things, with this duty: —

February, 1793, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 2.

February, 1797, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 5.

January, 1801, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 10.

February, 1805, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 19.

February, 1809, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 22.

February, 1813, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 26.

February, 1817, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 29.

February, 1821, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 34.

February, 1825, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 86.

February, 1829, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 89.

February, 1833, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 90.

February, 1837, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 98.

February, 1841, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 98.

February, 1845, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 100.

February, 1849, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 104.

February, 1853, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 107.

February, 1857, "to ascertain and report a mode for examining the votes for President and Vice-President," p. 112.

February, 1861, "to ascertain and report a mode for examining the votes for President and Vice-President," p. 170.

January, 1865, "to ascertain and report a mode of examining the votes for President and Vice-President," p. 257.

On all occasions prior to 1865 the mode reported was for that election only. In 1865 the joint committee reported a permanent standing rule, called "the twenty-second joint rule," which governed the counts in 1865, 1869, and 1873.

The phrase "mode of examining the votes" imports a verification, to some extent, of the votes. The resolutions included some other objects, — always the notification of the persons elected, until 1865, when, on the adoption of the twenty-second joint rule, the notification was by a separate resolution; often the "regulating the time, place, and manner of administering the oath to the President;" sometimes, as in 1857, the question of ineligible electors; or, as in 1821, 1837, 1857, and 1869, the dealing with disputed votes.

Every one of these resolutions asserts the rightful power of the two Houses over the counting; and that power was asserted in twenty-one successive elections without denial or question. Every one of these resolutions is incompatible with the existence of any power whatever over the subject on the part of the President of the Senate. If he had a constitutional right to govern the count, no one of these resolutions would have been valid.

After the mode of examining the votes was "ascertained and reported" by the committees, the two Houses, by concurrent resolution, have adopted the mode finally agreed upon. They have not only asserted their power over the counting in the creation of those committees, but in all cases have again asserted it by a formal and authoritative adoption of the

work of the committees by concurrent resolution of the two Houses.

The resolution prescribing the mode of counting has always begun by fixing the time and place of the joint meeting of the two Houses for the purpose of counting the electoral votes.

Places of meeting of the two Houses.

The places of meeting to count the electoral votes have been determined invariably by a joint resolution of the two Houses. At the two elections of General Washington they met in the Senate Chamber. At the election of John Adams the Senate joined the House in the Hall of the Representatives. At the several elections of Thomas Jefferson, in 1801 and 1805, the two Houses met in the Senate Chamber. Since then they have invariably met in the Hall of the Representatives, making four times in the Senate Chamber, and seventeen times in the Hall of the Representatives.

Appointment of tellers by the two Houses.

The resolutions prescribing the mode of counting have always contained a provision that one teller on the part of the Senate, and two tellers on the part of the House of Representatives, should be appointed; and in every counting of the electoral votes since the formation of the Government, two tellers have acted for the House of Representatives and one teller has acted for the Senate. Even in the anomalous counting of 1789, that was so. At every counting, from 1793 to 1873, inclusive, the House by a resolution has appointed two tellers and the Senate has appointed one teller. In the language of Senator Boutwell,[1] "the tellers were the organs, the instruments, the hands of the respective Houses; the votes were counted by the tellers, and, being counted by the tellers, they were counted by the two Houses; and therefore there never has been any different practice, and no different practice could have arisen under the Constitution. The two Houses in convention have from the first until now counted the votes."

[1] March 13, 1876; see Proposed Changes, p. 11.

The fact that the tellers have always been appointed by the two Houses, — have held these trusts at the pleasure of the two Houses, subject to their orders and instructions, and wholly free from the control of the President of the Senate, — is of itself decisive in favor of the right of the Houses to count the votes, and is equally decisive against any pretension on the part of the President of the Senate to govern or in any manner to interfere with the counting.

Function of the tellers.

At every counting, from 1793 to 1861, inclusive, the resolutions adopted by the two Houses have defined the duty of the tellers to be, —

1. "To make a list of the votes as they shall be declared."

2. "The result shall be delivered to the President of the Senate."

In practice, the tellers have read the votes, one by one, after they have been opened or the seals sometimes broken, sometimes unbroken, by the presiding officer, or in some instances the packages with unbroken seals handed over by the presiding officer; have read each certificate in full to the two Houses, which, in the phraseology of the resolutions, is the "declaring" of the vote in each certificate, and is sometimes so called in the journals; have entered each vote so declared upon a list; and then have delivered the result to the presiding officer.

The joint rule governing the counting in 1865, 1869, and 1873 defines the function of the tellers as follows: —

> "One teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, the certificates of the electoral votes; and said tellers, having read the same in the presence and hearing of the two Houses then assembled, shall make a list of the votes as they shall appear from the said certificates; and the vote having been counted, the result of the same shall be delivered to the President of the Senate."

It is to be observed that the phraseology of the joint rule deems the counting to be completed while the certificates are in the hands of the tellers, after they have been opened and handed

to the tellers, and before the result has been delivered to the presiding officer. It is to be observed also that all questions as to the authenticity or validity of any vote must be raised and must be submitted to and determined by the two Houses before the votes have left the hands of the tellers. That has been the invariable practice from the beginning of the Government in every case of a disputed vote. That practice was defined and stated and adopted in the joint rule established in 1865; it was expressed as follows: —

"If upon the reading of any such certificate by the tellers any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall in like manner submit said question to the House of Representatives for its decision; and no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses, which being obtained, the two Houses shall immediately reassemble, and the presiding officer shall then announce the decision of the question submitted; and upon any such question there shall be no debate in either House. And any other question pertinent to the object for which the two Houses are assembled may be submitted and determined in like manner."

Functions of the President of the Senate in respect to counting the electoral votes.

As to the implied custody of the votes before the counting, the Constitution (Amendments, Article XII. Section 1) provides that the electors "shall transmit" the certified lists of their votes for President and Vice-President "sealed to the seat of government of the United States, directed to the President of the Senate."

The statute of 1792 provides that "in case there shall be no President of the Senate at the seat of government on the arrival of the persons intrusted with the certificates of the votes of the electors, then such persons shall deliver such certificates into the office of the Secretary of State, to be safely

kept, and delivered over as soon as may be to the President of the Senate." [1]

The Constitution (Article XI. Section 1, Sub-section 3, and Amendment 12, Section 1) provides that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates." As to the opening of the votes.

At the time the provision that the sealed packages of votes to be transmitted by the electors to the seat of government and addressed to the President of the Senate came before the Convention of 1787, it was a part of the scheme that the President of the Senate should open all the certificates in the Senate, and that the votes should then and there be counted; and that in the event of a failure of choice by the electoral colleges, the Senate should immediately elect both the President and Vice-President.[2]

The report of the committee was modified by providing that the President of the Senate should open all the certificates "in the presence of the Senate and the House of Representatives;" and then the election of President, on the failure of a choice by the colleges, was taken away from the Senate and given to the House of Representatives.[3] But the power, on a failure of a choice by the colleges, to elect the Vice-President, remained in the Senate. The requirement that the certificates transmitted to the seat of government should be addressed to the President of the Senate under seal, and that the packages should be opened in the presence of the official bodies which were to take jurisdiction of the facts and remedy any failure in the choice by the electoral colleges, was allowed to stand. These provisions were intended to secure the votes given by the electors at their meetings in the several States from being tampered with, until they should come into the actual possession of the two Houses.

The House of Representatives and the Senate had not only a right, but also a duty and an official necessity, to know in the

[1] Rev. Stat. sec. 145, p. 22. [2] Sept. 4, 1787; 5 Elliott, p. 507.
[3] 5 Elliott, pp. 518, 519, 520.

most authentic manner the result of the votes given in the electoral colleges. In the first place, the House of Representatives, on the failure of a choice of President by the electoral colleges, was charged with the duty of electing the President. The fact of the failure of the colleges, as specified and defined in the Constitution, was the sole basis of the jurisdiction of the House to act. Its own means of "examining the votes for President and Vice-President" (such is the language of all the concurrent resolutions of the two Houses from 1793 to 1865, and of the joint standing rule by which they were replaced in 1865) was the only evidence provided by the Constitution of the fact on which the House acquired jurisdiction.

No judgment, certification, or act of any other official body was interposed as a condition. The House is a witness of the opening of the certificates; it is an actor in the counting of the votes by its own tellers and in its presence. "And if no person have" a "majority" of "the electors appointed, then from the persons having the highest numbers, not exceeding three, in the list of those voted for as President, the House of Representatives shall choose immediately by ballot the President." Such is the imperative command of the Constitution. And when the House has acted in such a case, there is no review of its action, nor any appeal from its decision.

The Senate has a similar jurisdiction, on the failure of a choice of Vice-President by the electoral colleges, to elect the Vice-President. It has the same right, duty, and official necessity to know the result of the votes.

In the second place, the two Houses of Congress have all the powers of verification of the electoral votes and their results which the Constitution and the laws supply or allow. Nobody else in the Federal Government has any such powers. The two Houses have always themselves made the count, and regulated its process and procedure by concurrent resolution applicable to each particular election until 1865. Then they did so by a standing joint rule. Doubtless they may do so, within constitutional limits, by legislation.

They are the most appropriate and the safest depositary of such powers in this respect as are to be exercised by the Federal Government. The Convention of 1787, until nearly the close of its deliberations, adhered to the plan of intrusting the election of President to the two Houses of Congress. When it finally adopted the system of electors chosen by the people or legislatures of the States it still, in case of a failure of choice by the electors, vested the election of President in the House, and of the Vice-President in the Senate. Those bodies are the general representatives of the people, and the depositaries of the legislative powers of the Government. No better, wiser, or safer trustees of the power to count the electoral votes can be found in the nature of human affairs.

The President of the Senate has no constitutional power, by virtue of his office as such president, to do anything in respect to the counting but "to open all the certificates" in the presence of the two Houses. He has never done anything further except by virtue of an express grant of authority conveyed in concurring resolves or orders from the two Houses.

Presiding at the joint meeting.

The House of Representatives has never parted with its right to retain its own presiding officer or to insist that its consent is necessary to the temporary appointment of a presiding officer for the two Houses. There is no constitutional provision nor any law giving the President of the Senate the right to preside over the two Houses when sitting together at the counting of the electoral votes. The two Houses assemble, not in the individual capacity of the members, but in the official capacities of those bodies; they assemble as a Senate and House of Representatives. If no positive provision for one presiding officer is made, the Speaker would preside over the House of Representatives. At the first five elections nothing is said in the recorded proceedings about a presiding officer. At Jefferson's second election the Speaker is described as occupying a seat "on the floor on the right side of the President of the Senate," — one of the exceptional cases in which the two Houses met in the Senate Chamber.

At Madison's first election, in 1809, John Randolph, a member of the House, objected to the President of the Senate being permitted to occupy the Speaker's chair without the formal invitation or permission of the House. Thereupon a motion was made and passed that when the members of the Senate were introduced, the Speaker should relinquish the chair to the President of the Senate. Mr. Randolph then made a motion, which was adopted, that the Senate be notified of this vote by a message, to show that its President would occupy the Speaker's chair by courtesy, and not of right. "If not," he said, "it might appear that the President of the Senate took the chair as a matter of right. He said he knew that to many persons matters of this sort appeared to be of minute importance; but in everything touching the privileges of this House as it regarded the claims of the other co-ordinate branches of the Government, he would stickle for the ninth part of a hair. It was well known that in England the privileges of the Commons had been gained inch by inch from the kings and nobles by a steady perseverance; and that man must have very little knowledge of mankind indeed who was not persuaded that those privileges might be lost, as they were gained, by gradual and imperceptible encroachment on the one hand, and tacit yielding on the other." At the succeeding election of Madison, in 1813, no resolution was adopted on this subject; but the record shows that "a message from the House of Representatives informed the Senate that the House is now ready to attend the Senate in opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States, in pursuance of the resolution of the two Houses of Congress, and that the President of the Senate will be introduced to the Speaker's chair by the Speaker of the House of Representatives."

In the joint session of the two Houses in 1817, Mr. John W. Taylor, an experienced parliamentarian, at one time Speaker of the House, addressed himself to the Speaker of the House; and Mr. J. B. Varnum, of the Senate, also an experienced par-

liamentarian, at one time President *pro tempore* of the Senate, addressed himself to the President of the Senate: thus respecting the separate existence and action of the two Houses, even when assembled in joint session.

At Monroe's second election, in 1821, when the two Houses were involved in the Missouri controversy, a resolution of the Senate, adopted February 13, prescribing the mode of counting, provided that at the joint session the President of the Senate should preside. But the resolution, reported to the House by Mr. Clay, the great pacificator on that perilous occasion, provided that "the President of the Senate, seated on the right of the Speaker of the House, shall be the presiding officer of the Senate, and the Speaker shall be the presiding officer of the House." This resolution was adopted on the 13th of February. Mr. Clay afterward offered a resolution, which was adopted, appointing a committee of two "to receive the Senate, conduct the President of the Senate to the chair, and the members to the seats assigned to them." The President of the Senate was conducted to the Speaker's chair, and the Speaker took a chair at his left hand. When the other votes had been counted, and the votes of Missouri were announced and handed to the tellers, a member objected to receiving the vote of Missouri, on the ground that Missouri was not a State of the Union. The motion was thereupon made by a Senator that the Senate do now withdraw to its chamber; which was carried, and the Senate withdrew accordingly. At the close of a debate in the House, Mr. Storrs demanded the reading of the resolution of the House prescribing the mode of counting compared with that of the Senate. An explanation then came out that the retirement of the Senate from the joint session was caused by the discovery of the discrepancy between the two resolutions. Afterward the House sent a message to the Senate for the purpose of continuing the enumeration of the electoral votes according to the joint resolution which had been adopted, and the Senate returned to the joint session. The counting was completed, and the vote of Missouri counted under the concurrent resolution providing for

an alternative enumeration of the votes with Missouri excluded and with Missouri included. The session continued under the House resolution, the two Houses acting under their respective presiding officers. On this same occasion the President of the Senate occupied the Speaker's chair by virtue of an express provision in the joint resolution on procedure. In defence of this feature of the programme, Mr. Clay, who was chairman of the committee which reported it, said: "As convenience rendered it necessary for the Senate to meet this House here in its own hall, it was due to that body by courtesy and propriety that the President should be invited to preside, he being the officer designated by the Constitution to perform a certain duty appertaining to the occasion which called the two Houses together."

At the election of John Q. Adams, in 1825, the President of the Senate was invited to a seat on the right hand of the Speaker of the House. In this case the tellers, after the votes had all been opened and counted, "left the clerk's table; and presenting themselves in front of the Speaker, Mr. Tazewell delivered their report of the votes given, which was then handed to the President of the Senate;" it being the evident intent of the teller, Tazewell, to recognize the Speaker of the House as no less a presiding officer than the President of the Senate.

At Jackson's first election, in 1829, no resolution was passed in regard to the presiding officer; but the record shows that the Vice-President "seated himself at the right hand of the Speaker."

At Jackson's second election, also, there was no provision for a presiding officer in the concurrent resolution; but on that occasion the President of the Senate occupied the Speaker's chair.

The President of the Senate has occupied the Speaker's chair at every one of the ten Presidential elections which have succeeded the election of 1833, but in every instance except one by virtue of the express authority of a joint resolution of the two Houses, and never as a matter of right.

On some occasions the concurrent resolutions have in terms conferred the duty of presiding on the President *pro tempore;* sometimes when the Vice-Presidency has been vacant; and sometimes when it has not been vacant. The result is that the power of the two Houses to designate the presiding officer at the joint session has been always recognized, and frequently exercised; and it is only by express or tacit consent that the usual and regular mode of acting by the respective presiding officer is waived and a single presiding officer designated.

The function of the two Houses, when sitting together, has been carefully and jealously restricted to the mere counting; and all debate and all voting have been uniformly excluded. Whenever it became necessary to entertain debate or to vote, the Houses have generally separated, and acted in their respective chambers. When they have acted at all while assembled in the same hall, they have acted separately, and under their respective presiding officers. The result is that though the semblance of a presiding officer has been generally given to the President of the Senate while the mechanical process of counting was going on, he has really exercised none of the functions usually attributed to the presiding officer of a deliberative body.

Announcing to the two Houses the state of the vote.

The President of the Senate has no authority, by virtue of his office as such President, to announce the result of the count of electoral votes made by the two Houses of Congress assembled in joint convention. Even where he has been expressly designated as their presiding officer by concurrent resolves or orders of the two Houses, he has never exercised any authority to announce the result of the count by virtue of his function as the presiding officer. In every case, from 1793 to the present time, whatever power he has exercised in this respect has been expressly granted, defined, and limited by provisions of the concurrent resolutions prescribing the mode of counting the electoral votes on each particular occasion. In one well-known case (in 1821) this power of announcement was granted

to him by the House when he did not, but the Speaker did, preside over the House. No doubt, in the orderly course of business in a legislative body, its vote would usually be announced to it by its presiding officer; but that is simply because such is a convenient practice. The Speaker is the customary organ of the House for such purposes; but it is quite certain that in performing such a function he acts by the order of the House, and is subject to its commands. It is no less certain that the House can appoint some other organ to exercise this function if it chooses. If it may do so in respect to its own vote, still more may it do so in respect to the result of a count of votes of the electoral colleges made by it through its tellers. Now it has so happened that in every case, from 1793 to the present time, the two Houses, assembled in joint convention for the purpose of counting the electoral votes, have expressly prescribed the rules which have governed the announcement of the result of such a count. They have from time to time revised some of the rules which they have applied; but they have always prescribed rules which have been obeyed and have uniformly governed their proceedings.

In every case the two Houses have provided that the count should be by tellers of the two Houses, who have frequently been specially instructed by the two Houses as to how they should count, what votes they should admit, and what votes they should not admit. In every case they have prescribed that it was only after the votes had been publicly examined and ascertained before the two Houses; after they had been entered on a list; read to the two Houses and the results of the enumeration on the lists computed, — after the results so found by the tellers had been "delivered" by the tellers to the presiding officer, that any duty on the part of the presiding officer arose.

In every case, from 1795 to 1861 inclusive, in eighteen successive countings, these conditions were expressly prescribed in respect to the one particular counting to be regulated on each occasion. At the three countings of 1865, 1869, and 1873 the

same conditions were applied under the standing joint rule, which codified the practice in the following words: —

"One teller shall be appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, the certificates of the electoral votes; and the said tellers, having read the same in the presence and hearing of the two Houses thus assembled, shall make a list of the several votes as they shall appear from the said certificates; and the votes having been counted, the result of the same shall be delivered to the President of the Senate."

Such are the conditions which must have been fulfilled in virtue of formal orders prescribed by the two Houses, at every one of the twenty-one countings, from 1793 to 1873 inclusive, before the presiding officer could act at all.

After all these conditions have been complied with, his authority in respect to announcements begins.

In 1793 it was expressed in these words, — "Who shall announce the state of the vote and the persons elected, to the two Houses assembled as aforesaid."

In 1801 and 1805 the announcement was of "the state of the vote" only, and not of the persons elected. In the joint rule of 1865 the words are: "The state of the vote and the names of the persons, if any, elected."

The concurrent orders in 1801 and 1805 had another peculiarity. They provided that "the state of the vote shall be entered on the journals; and if it shall appear that a choice hath been made agreeably to the Constitution, such entry on the journals shall be deemed sufficient declaration thereof."

These instances illustrate how completely the two Houses, by their concurrent resolves or orders, have controlled both the manner and substance of the announcement to the two Houses assembled in joint convention. It has already been mentioned that in 1821 the resolve or order of the House of Representatives authorized the President of the Senate to make the announcement, though he did not, and the Speaker did, at the time preside over the House.

An inspection of the resolves or orders of the two Houses under which the countings have been had, an analysis of their exact terms and of the nature and effect of the acts done under them, demonstrate that the President of the Senate or other presiding officer never had any independent power over even the announcement of the result of the count, never had any power except to do as he was commanded by the affirmative concurrent orders of the two Houses. Still less would he have power to revise or alter the results delivered to him by the tellers, or to intermeddle in any manner with the tellers in "examining and declaring the votes," in making the lists or enumerating the results, or in obeying the instructions of the two Houses as to what should or should not be admitted as votes and counted.

Such an assumption of power would be as naked usurpation on the part of the President of the Senate or any other presiding officer as it would be if the same power should be assumed by the clerk, or by a messenger or page of one of the Houses.

The law is well stated by John Adams, Vice-President, and President of the Senate, in 1797, when he announced "the state of the vote and the persons elected to the two Houses assembled" in joint convention. "In obedience," said he, "to the Constitution and law of the United States, and to the commands of both Houses of Congress expressed in their resolutions passed in the present session, I now declare that John Adams is elected President," etc.

Chancellor Kent, in his "Commentaries" (vol. i. p. 277), says: —

Chancellor Kent's "presumption."

"The Constitution does not expressly declare by whom the votes are to be counted. In the case of questionable votes and a closely-contested election, this power may be all important; and I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes and determines the result, and that the Houses are present only as spectators, to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors."

This remark was written more than fifty years ago, and is one of those hasty suggestions which it was a characteristic of the venerable Chancellor in his judicial career candidly to correct. Indeed he does not seem to have had confidence in it himself. He makes the power in the President of the Senate, if it exist at all, dependent on the absence of all legislative provision on the subject.

The power to count the votes is not a necessary incident to the power to receive the packages and open them in presence of the two Houses. If it were, it could not be taken away by legislation. As the principal power is derived from the Constitution, the incidental power would stand with it superior to the legislative authority of Congress.

If the power to count the votes be not incidental to the power to receive and open the certificates, the President of the Senate has no pretence of claim to it. The absence of legislation might leave a default of power, but could not confer it on a functionary who had no other title to it. The Constitution does not make the election of President dependent on the count of the votes by any particular authority, but only upon the fact of receiving a majority of the votes. If there were no tribunal authorized to ascertain this fact, it might impose on the public bodies of the State the necessity of finding it out for themselves and acting on their own judgment; but it would not entitle the President of the Senate to seize upon the vacant authority.

The Government is not exposed to such a *casus omissus*. It is admitted by Chancellor Kent that the legislative bodies could supply the alleged defect. They are therefore the best judges whether such a defect exists, or whether a true construction of the Constitution vests the implied power of counting in a fit and adequate tribunal, such as the two Houses of Congress. They have so decided, and have acted on that conclusion for more than eighty years. An established practice, uninterrupted and undisputed, ought to be accepted as law.

In 1797, in notifying the Vice-President of his election,

The Notification Certificates.

the President of the Senate transmitted to him a certificate which incidentally stated that the President of the Senate had counted the votes. No such formality was extended to the President. In 1825 the Vice-President was again favored in the same manner. In 1801 a more singular certificate of the election of President and Vice-President was made; for it assumed also to certify what had happened in the House of Representatives. In 1805, 1809, 1813, and 1817 similar certificates were made. These are all since 1789; none such have been known for the last fifty years.

The first criticism on these papers is that they seem to have followed the form of that of 1789; in which case the procedure of the regular count by the two Houses, which has been practised ever since, had not been established, and the special President of the Senate, in the anomalous conditions of the then Government, probably did himself verify the enumeration of the votes.

The more important observation is that we must distinguish between the ambiguous senses in which the word "count" is constantly used. In one sense it is a mere clerical enumeration of the votes, without the slightest particle of discretion. In the other sense it involves a decision of what shall be counted as a vote, and includes a large element of judicial power. Now it might well be that, at the counting by the two Houses through their tellers, the presiding officer or the Speaker of the House and the clerks and many of the members had gone through the enumeration or had verified it, so as to be able to say, in the narrowest sense, that they had counted the votes, or that the presiding officer could certify that he had counted constructively. Everybody who chose to give the necessary attention to the process, publicly performed, might be said in some sense to count.

But taking the count of 1797 as an illustration, Vice-President John Adams presided, and gave the first of these certificates to Jefferson, who succeeded him as Vice-President, while

Mr. Adams himself was elected President. That counting was conducted according to a mode which had been prescribed by concurrent resolutions of the two Houses, adopted on the report of a joint committee raised for that purpose. Those resolutions specified every step in the process. They directed that the tellers appointed by the two Houses to examine the votes should make a list of them as they should be declared by a reading of them to the two Houses, and when it was completed should deliver the result to the President of the Senate, who should then announce to the two Houses the state of the vote and the persons elected.

The journals of the two Houses show that the sealed packages of certificates were opened by the Vice-President and by him delivered to the tellers appointed by the two Houses; that they examined and ascertained the number of votes and made a list of them, and presented that list to the Vice-President, which was read. He thereupon declared to the two Houses the persons elected as President and Vice-President, and said that he did so "in obedience to the commands of both Houses of Congress, expressed in their resolutions." That the presiding officer did in fact interfere, or had any power to interfere, with the official machinery of the counting, or with the process of the counting, or with the results of the counting, or that in the restricted function of announcing that result to the Houses over which he presided he did or had power to do anything but obey the commands of the two Houses, is contradicted and disproved by the official records of the two Houses and by his own public declarations at the time.

In whatever barren sense he may be said to have counted the votes, it exercised no influence over the results. The only authentic, official, and obligatory counting was exclusively by the two Houses of Congress.

The same statement is equally true of every case in which such a certificate was ever made. In one of those cases the votes of Indiana were disputed. The question was considered and debated by the Houses; and as it made no difference with

the result, it was indefinitely postponed. But the presiding officer was not even consulted about it.

As precedents to sustain the President of the Senate in assuming the power to count the votes in the sense merely of enumerating the votes, and still more in the sense of adjudicating on the authenticity and validity of the votes, the certificates are utterly worthless.

The precedent of 1857.

The action of President (*pro tempore*) Mason in 1857 seems to have been misstated, unintentionally, by Senator Morton. Mr. Mason did not arrogate to the presiding officer any power to decide whether the vote of Wisconsin was valid, or to decide whether it should be counted. He repeatedly disclaimed any such power. The electors of Wisconsin, having been prevented by a snowstorm from assembling on the day prescribed by the Act of Congress, met on the next day and voted. Many senators and representatives were of the opinion that the vote was illegal and void. As in the case of Indiana in 1817, Missouri in 1821, and Michigan in 1837, the vote, whether counted or not, made no change in the result of the election; and in another respect the question was even less important. In all those three cases the questionable votes were for the candidates who were elected; and although those candidates had a majority without the questionable votes, the statement of the aggregate number of votes received by those candidates had either to include or exclude the questionable votes. In the Wisconsin case the votes were for Fremont and Dayton, who were in any event the minority candidates; and the statement of the votes received by Buchanan and Breckinridge was unaffected by these votes, and showed a majority irrespective of them.

The tellers entered the votes of Wisconsin on their list, included them in the footing, and reported the result to the presiding officer. When the votes of Wisconsin were reached, objection was made. But the objectors did not seem aware of the usage of moving for a separation of the Houses in order to discuss and decide whether the vote of Wisconsin should be

counted; and the presiding officer ruled that debate was out of order in the joint meeting. The process, therefore, went on, neither of the two Houses having by a parliamentary method suspended the operation of the ministerial functions which, without such interposition, were being properly performed. The tellers made their report verbally; and the presiding officer obeyed the concurrent resolution by announcing to the two Houses the state of the vote and the persons elected. The tellers were about to make their report in writing, when, to enable the debate to be had, the motion was made and carried that the Senate retire to its own chamber.

During the joint session Senator Crittenden inquired: "Do I understand the Chair to decide that Congress in no form has the power to decide upon the validity or invalidity of a vote?" The presiding officer answered that he had made no such decision; that "under the law and the concurrent order of the two Houses, nothing can be done here but to count the votes and declare the votes thus counted to the Senate and House of Representatives sitting in this chamber;" and that further action could only be taken in the two Houses in their separate capacities.

Afterward the presiding officer said he "was not aware that he could decide what effect, if any," the irregularity in the vote of Wisconsin "would have on the votes" of that State. Nor is it his duty to "decide upon whom devolves the duty of determining what the effect may be." Senator Crittenden referred to the presiding officer as having assumed "to declare the number of votes, involving the privilege of determining a Presidential election, and saying who shall be President;" and said, "I protest against any such power." Senator Toombs said, "I join with the senator in that protest." The President answered that "the presiding officer is utterly unaware that he has assumed the exercise of any such power." Senator Toombs: "I consider that the presiding officer has done so." The President said: "The concurrent order of the two Houses makes it the duty of the President of the Senate to announce the state of

the vote, and the persons elected, to the two Houses assembled. That duty he has discharged, and none other."

Immediately after the Senate had withdrawn to its own chamber, a debate upon the subject ensued. The written report of the tellers, the delivery of which to the two Houses had been intercepted by their separation, was submitted to the Senate. That report stated the aggregate votes of Fremont and Dayton, omitting the votes of Wisconsin; and stated those votes separately, with the date when they had been given. Mr. Mason, President *pro tempore*, who had been the presiding officer of the two Houses in their joint meeting, again disclaimed in the most positive terms the assumption of power ascribed to him. He said: —

"The Chair will further state to the Senate, as the result of the action in the hall of the House of Representatives in counting the votes, that the duty was devolved upon the presiding officer there, by the concurrent order of the two Houses, to declare the result of the vote as delivered to him by the tellers. That declaration did not involve, in the opinion of the Chair, the validity or the invalidity of the vote of the State of Wisconsin. The declaration made by the Chair in the presence of the two Houses as to the gentleman who had been elected President was written down, and is in these words: 'That James Buchanan, of the State of Pennsylvania, having the greatest number of votes for President, and that number being a majority of the whole number of electors, has been duly elected.' Whether the vote of the State of Wisconsin be included or not, the declaration made by the presiding officer, — that Mr. Buchanan had a majority of the votes, and that that majority was a majority of the whole number of the electoral votes, — was strictly conformable to the fact."

Again, the President of the Senate said: —

"The presiding officer, in his own judgment, believed then, as he believes now, that he declared correctly, as the state of the vote, that James Buchanan had received the greatest number, and that that number was a majority of the whole number of electors; not undertaking to decide, and not having decided, whether the vote of the State of Wisconsin had been given to John C. Fremont or not, — a power that the Chair utterly disclaims and never asserted."

The course of procedure taken in the presence of the two Houses at the various elections shows the same uniform recognition of their supreme authority in deciding upon the authenticity and validity of the electoral certificates. How the counting has actually been done.

The informality of the first election in 1789, and the fact that the course then pursued was never repeated, deprives it of all authority as a precedent.

At the second election of President Washington, in 1793, "the certificates of the electors of the fifteen States in the Union, which came by express, were by the Vice-President opened, read, and delivered to the tellers appointed for the purpose; who, having examined and ascertained the votes, presented a list of them to the Vice-President, which list was read to the two Houses, and is as follows, etc.: 'Whereupon the Vice-President declared George Washington unanimously elected President,'" etc. 1793.

On this occasion the President of the Senate only opened, read, and delivered the certificates to the tellers; they examined, ascertained the votes, and presented a list of them to the President of the Senate, which list he then read to the two Houses. The function of the Vice-President was then, as it has always been since, purely a passive one. Where there has been any variation, it has been to invigorate rather than weaken the prerogatives of the two Houses.

At the election of John Adams, in 1797, "the certificates of the sixteen States were by the President opened and delivered to the tellers appointed for the purpose, who, having examined and ascertained the number of votes, presented a list thereof to the Vice-President [Mr. Adams himself], which was read as follows, etc.; whereupon Mr. Adams proceeded to discharge what he regarded as the duty of the President of the Senate. He addressed the two Houses as follows: — 1797.

"'Gentlemen of the Senate and House of Representatives, — By the report which has been made by the tellers appointed by

the two Houses to examine the votes, there are 71 votes for John Adams, 68 for Thomas Jefferson,' etc., etc.; 'so that the person who has 71 votes, which is the highest number, is elected President, and the person who has 68 votes, which is the next highest number, is elected Vice-President.'"

The President then sat down for a moment; and rising again, thus addressed the two Houses: —

"In obedience to the Constitution and law of the United States, and the commands of both Houses of Congress, expressed in their resolution passed in the present session, I declare that John Adams is elected President of the United States for four years, to commence with the 4th of March next, and that Thomas Jefferson is elected Vice-President of the United States for four years, to commence with the 4th of March next."

1801. At the election of Thomas Jefferson, in 1801, "the President of the Senate, in the presence of the two Houses, proceeded to open the certificates of the electors of the States, beginning with the State of New Hampshire; and as the votes were read, the tellers on the part of each House counted and took lists of the same, which being prepared, were delivered to the President of the Senate, and are as follows," etc.

1805. At the second election of Thomas Jefferson, in 1805, the same course of procedure was taken by the two Houses as at his first. The only difference worth remarking is thus reported in the Annals of Congress: —

"The President [Mr. Burr] stated that, pursuant to law, there had been transmitted to him several packets, which from the indorsements upon them appeared to be the votes of the electors of a President and Vice-President; that the returns forwarded by mail, as well as the duplicates sent by special messengers, had been received by him in due time. 'You will now proceed, gentlemen,' said he, 'to count the votes as the Constitution and laws direct;' adding that, perceiving no cause for preference in the order of opening the returns, he would pursue a geographical arrangement, beginning with the Northern States.

"The President then proceeded to break the seals of the respective returns, handing each return and its accompanying duplicate,

as the seals of each were broken, to the tellers through the secretary; Mr. S. Smith reading aloud the returns and the attestations of the appointment of the electors, and Mr. Clay and Mr. Griswold comparing them with the duplicate return lying before them. According to the enumeration, the following appeared to be the result. . . .

"After the returns had been all examined, without any objections having been made to receiving any of the votes, Mr. S. Smith, on behalf of the tellers, communicated to the President the foregoing result, which was read from the Chair; when the Vice-President said: 'Upon this report it becomes my duty to declare, agreeably to the Constitution, that Thomas Jefferson is elected President of the United States for the term of four years from the third day of March next, and that George Clinton is elected Vice-President of the United States for four years from the third day of March next.'"

At Madison's first election, in 1809, "the certificates of the electors for the several States were, by the President of the Senate, opened and delivered to the tellers appointed for the purpose; who, having examined and ascertained the number of votes, presented a list thereof to the President of the Senate, which was read as follows." 1809.

At Madison's second election, in 1813, "the two Houses of Congress, agreeably to the joint resolution, assembled in the Representatives' chamber; and the certificates of the electors of the several States were, by the President of the Senate, opened and delivered to the tellers appointed for the purpose, who, having examined and ascertained the number of votes, presented a list thereof to the President of the Senate, which was read as follows," etc. 1813.

It is mentioned in the House proceedings that the returns for each State "were severally read aloud by one of the tellers, and noted down and announced by the secretaries of each House."

At Monroe's first election, in 1817, "the two Houses of Congress, agreeably to the joint resolution, assembled in the Representatives' chamber; and the certificates of the electors of the several States were, by the President of the Senate, opened and delivered to the tellers 1817.

appointed for the purpose, who, having examined and ascertained the number of votes, presented a list thereof to the President of the Senate, which was read as follows. . . . The tellers handed a statement thereof to the President of the Senate, who announced to the joint meeting the following as the state of the votes," etc.

At Monroe's second election, in 1821, in the Senate, "the certificates were, by the President of the Senate, opened and delivered to tellers appointed for the purpose, by whom they were read, except the State of Missouri." 1821.

The two Houses then separated to consider that case; after which the record proceeds: —

"Whereupon the two Houses having again assembled in the Representatives' chamber, the certificate of the electors of the State of Missouri was, by the President of the Senate, delivered to the tellers, who read the same, and who, having examined and ascertained the whole number of votes, presented a list thereof to the President of the Senate, by whom it was read, as follows," etc.

The House proceeding states: —

"The Senate again appeared, and took seats in the House as before.

"The President of the Senate, in the presence of both Houses, proceeded to open the certificate of the electors of the State of Missouri, which he delivered to the tellers, by whom it was read, and who registered the same.

"And the votes of all the States having been thus counted, registered, and the lists thereof compared, they were delivered to the President of the Senate, by whom they were read as already printed.

"The President of the Senate then, in pursuance of the resolution adopted by the two Houses, proceeded to announce the state of the votes to the two Houses of Congress, in joint meeting assembled, as follows:

"Were the votes of Missouri to be counted, the result would be, — for James Monroe, of Virginia, for President of the United States, 231 votes; if not counted, for James Monroe, of Virginia, 228 votes. For Daniel D. Tompkins, of New York, for Vice-President

of the United States, 218 votes; if not counted, for Daniel D. Tompkins, of New York, for Vice-President of the United States, 215 votes. But in either event James Monroe, of Virginia, has a majority of the votes of the whole number of electors for President, and Daniel D. Tompkins, of New York, has a majority of the votes of the whole number of electors for Vice-President of the United States."

At the election of John Quincy Adams in 1825, on motion of Mr. Taylor, it was — 1825.

"Ordered that a message be sent to the Senate that this House is now ready to receive them in pursuance of the resolution of the two Houses of yesterday, to the end that the President of the Senate, in the presence of the Senate and the House of Representatives, may open the certificates of the votes of the electors of the several States in the choice of a President and Vice-President of the United States, and that the same may be counted; and that the clerk do go with said message.

"The President of the Senate (Mr. Gallaird) then rose and stated that the certificates forwarded by the electors from each State would be delivered to the tellers.

"Mr. Tazewell, of the Senate, and Messrs. John W. Taylor and Philip P. Barbour, on the part of the House, took their places as tellers at the clerk's table. The President of the Senate then opened two packets, one received by messenger and the other by mail, containing the certificates of the votes of the State of New Hampshire. One of these was then read by Mr. Tazewell, while the other was compared with it by Messrs. Taylor and Barbour. The whole having been read, and the votes of New Hampshire declared, they were set down by the clerks of the Senate and of the House of Representatives, seated at different tables. Thus the certificates from all the States were gone through with.

"The tellers then left the clerk's table; and presenting themselves in front of the Speaker, Mr. Tazewell delivered their report of the votes given, which was then handed to the President of the Senate, who again read it to the two Houses."

It is here to be noted that the House carefully avoids saying that the President was to be invited to do anything more than open the votes. He was invited to open them to the end "that they may be counted," not to open and count them. It is also a significant assertion of the House's prerogatives that the tellers

first presented themselves in front of the Speaker to deliver their report of the votes given. This report was then handed, it does not appear by whom, to the President of the Senate.

1829. At the first election of Andrew Jackson, in 1829, "the Vice-President then having before him the packages received, one copy by express, and one through the post-office, from the several States, took up those from the State of Maine; and announcing to the Senators and Representatives that those packets had been certified by the delegation from Maine to contain the votes of that State for President and Vice-President, proceeded to break the seals, and then handed over the packets to the tellers, who opened and read them at length. The same process was repeated, until all the packets had been opened and read; when Mr. Tazewell, retiring to some distance from the chair, read the following report." When the teller had finished reading, the result was again read by the Vice-President.

1833. At the second election of Andrew Jackson, in 1833, as in previous cases, the votes of the electors were opened by the President of the Senate and delivered to the tellers appointed for the purpose; who, having examined and ascertained the number of votes, presented to the President of the Senate a list thereof as follows: "Messrs. Grundy, of the Senate, and Dayton and Hubbard, of the House of Representatives, acted as a committee to read and enumerate the votes; and, the whole having been gone through, the result was ascertained to be as follows." The President of the Senate "then announced the result, as reported by the tellers."

1837. At the election of Martin Van Buren, in 1837, the President of the Senate rose and said: "The two Houses being now convened for the purpose of counting the electoral votes for the several States for President and Vice-President of the United States, the President of the Senate will, in pursuance of the provisions of the Constitution, proceed to open the votes and deliver them to the tellers, in

order that they may be counted. I now present to the tellers the electoral vote of the State of Maine."

The tellers then counted the votes and announced them severally in their order, the same form having been observed in every case; the tellers also reading the qualifications of the electors and the certificates of their election.

At the election of William Henry Harrison, in 1841, "A message was received from the House of Representatives, announcing that the House was ready to receive the Senate and to proceed to count the votes for President and Vice-President of the United States, in conformity to the Constitution and in pursuance of the joint resolution on that subject. . . . After the votes had been counted, the Senate returned to the Senate Chamber. . . . The Vice-President of the United States, in the presence of the two Houses of Congress, proceeded to open the certificates of the electors of President and Vice-President, beginning with those of the State of Maine and ending with the State of Michigan; and the tellers, Mr. Preston on the part of the Senate and Mr. Cushing and Mr. John W. Jones on the part of the House, having read, counted, and registered the same, making duplicate lists thereof, and the lists being prepared, they were delivered to the Vice-President of the United States, and are as follows. . . . The President of the Senate then announced the state of the vote to the two Houses of Congress, in joint meeting assembled, and declared, etc., that William Henry Harrison, of Ohio, having a majority of the whole number of electoral votes, is duly elected President of the United States," etc. 1841.

At the election of James K. Polk, in 1845, "the President of the Senate rose and stated the object of this assemblage to be to count the votes cast by the electors of the respective States of this election for President and Vice-President of the United States; and handing to Mr. Walker (one of the tellers) a sealed package, he said: 'I deliver to the joint tellers the votes of the electors of the State of Maine for President and Vice-President of the United States, 1845.

in order that they may be counted.' Mr. Walker received the packet; and having broken the seals, the tellers examined the votes, which were announced to be nine in number, all of which were given for James K. Polk, of Tennessee, for President of the United States. The same number of votes were given for Vice-President for George M. Dallas, of Pennsylvania."

When the votes had thus all been counted, "Mr. Walker presented the returns of the tellers to the President of the Senate, who rose and announced the result, and then proceeded to declare that James K. Polk and George M. Dallas were elected."

At the election of Zachary Taylor, in 1849, the Vice-President rose and said: "In obedience to law, the Senate and House of Representatives have assembled on the present occasion so that I may fulfil the duty enjoined upon me by the Constitution by opening in their presence the sealed certificates of the lists of persons voted for by the electors in the several States as President and Vice-President, cause the votes to be counted, and have the persons to fill those offices ascertained and declared agreeably to the Constitution."

1849.

The Vice-President then opened the certificates of the State of Maine, and said: "I now open and present to the tellers chosen by the two Houses the certificates transmitted by the electors of the State of Maine, that the votes therein recorded may be counted." Mr. Jefferson Davis proceeded to read the certificates, and the vote reported was registered by the tellers in duplicate lists. This course was pursued in reference to ten States.

The certificates of ten other States were read by Mr. Barrow, and the certificates of ten other States were read by Mr. McClelland. "The tellers having read, counted, and registered the votes of the electors of thirty States, and compared their duplicate lists and delivered the same to the Vice-President, the Vice-President then received and read the report of the tellers," and announced the result of the vote by reading the report of the tellers.

At the election of Franklin Pierce, in 1853, the President (*pro tempore*) of the Senate rose and said: "The Senate and the House of Representatives have assembled for the purpose of counting the votes for President and Vice-President of the United States. I present to the tellers the certificates of the electoral college of the State of Maine." In the same manner he presented the certificates from the remaining States to Mr. Hunter, Mr. Jones, and Mr. Chandler, by whom respectively they were read and duly recorded by tellers. "The tellers having counted and registered the votes of the electoral colleges of the thirty-one States, and compared their lists, delivered to the President *pro tempore* the result, which was read by him, and he thereupon declared," etc. 1853.

At the election of James Buchanan, in 1857, the President of the Senate said: — 1857.

"Pursuant to the law, and in obedience to the concurrent order of the two Houses, the President of the Senate will now proceed to open and count the votes which have been given for the President and Vice-President of the United States," etc. "The teller appointed on the part of the Senate, and the two tellers appointed on the part of the House, will please take the seats assigned them in discharge of their duty."

The presiding officer proceeded to open and hand to the tellers the votes of the several States for President and Vice-President. Pending the count, Senator Cass suggested that it would be better to read the results of the vote, and not the certificate in full. The President of the Senate then said: —

"The presiding officer considers that the duty of counting the vote has devolved on the tellers under the concurrent order of the two Houses; and he considers further that the tellers should determine for themselves in what way the votes are verified to them, and read as much as they think proper to the two Houses assembled."

It appeared from the certificate of the electors from the State of Wisconsin that the electoral vote of that State had not been

cast on the day prescribed by law. Mr. Jones, of Tennessee (one of the tellers), reported:

"'Mr. President, — The tellers appointed on the part of the two Houses to count and report the votes given for President and Vice-President of the United States report that they have examined all the returns, and find that they are all regular, and that the votes were cast on the day required by law, except in the case of the votes cast by the State of Wisconsin; their returns show that they cast their electoral vote on the 4th of December, instead of the first Wednesday of December, which was the 3d, as required by law. All the returns show that James Buchanan, of the State of Pennsylvania, received 174 votes for President of the United States; that John C. Fremont, of the State of California, received, including the votes of Wisconsin, 114 votes for President of the United States; that Millard Fillmore, of the State of New York, received 8 votes for President of the United States.'

"The President of the Senate thereupon proceeded to recapitulate the vote as announced to the joint convention by Mr. Jones of Tennessee; and in further execution of the order of the two Houses, declared the result above stated."

Objections to the course adopted by the chairman in deciding to count the vote of Wisconsin without consulting the two Houses were vehemently urged by Messrs. Butler, Crittenden, and Orr; and the Senate withdrew, that the two branches of Congress might consider the objections.

Before returning, the presiding officer said: —

"The Chair would respectfully state that whatever difficulty may have arisen, it cannot be officially known to either House, until it is reported by the tellers, to whom the duty of counting the vote was confided."

In separate session, after hearing the report from the tellers of what had occurred in joint session, the President of the Senate said: —

"As a result of the action in the Hall of Representatives in counting the vote, the duty was devolved upon the presiding officer there, by the concurrent order of the two Houses, to declare the result of the vote as delivered to him by the tellers. That declaration did not involve, in the opinion of the Chair, the validity or invalidity of the vote of the State of Wisconsin."

The declaration made by the Chair in the presence of the two Houses as to the gentleman who had been elected President was written down, and is in these words: "That James Buchanan, of the State of Pennsylvania, having the greatest number of votes for President, and that number being a majority of the whole number of electors, has been duly elected."

Whether the vote of the State of Wisconsin be included or not, the declaration made by the presiding officer that Mr. Buchanan had a majority of the votes, and that that majority was a majority of the whole number of electoral votes, was strictly conformable to the facts. He subsequently stated his position yet more distinctly in reply to Senator Toombs, of Georgia: —

"The presiding officer did not undertake to decide whether the vote of the State of Wisconsin was a good vote or a bad vote. The presiding officer, upon that matter, did no more than recite the fact which was reported to him by the tellers, pursuant to the concurrent order of the two Houses. The presiding officer did no more than announce that the vote of Wisconsin had been given to John C. Fremont. Whether it was a good vote or a bad vote, he did not undertake to decide. The presiding officer announced further that James Buchanan had a majority of all the votes given, and that such majority was a majority of the whole electoral vote; and he declared, as his duty required him to do, that James Buchanan was thereby elected President of the United States. If the result could have been affected by the collateral fact reported by the tellers, that the vote of the State of Wisconsin had been given on a day different from that prescribed by law, the presiding officer would have considered it his duty to have reported, as the state of the vote, that whether a majority of the whole electoral votes had been given to James Buchanan would depend on canvassing the votes, — a duty that he did not assume. But inasmuch as it appeared clearly from the state of the vote that whether the vote of the State of Wisconsin was counted or not, the result of the election remained unaffected, he announced, as he considered his duty required him to announce, that James Buchanan had a majority of all the votes cast, and that such majority was a majority of the whole number of the electoral votes. He disclaims having assumed on himself any authority to determine whether that vote or any other vote was a good or a bad vote. . . .

"The order that was made by the Senate of the United States, prescribing the mode of counting the votes for President and Vice-President, is not a joint resolution. It is a resolution of the Senate, in which the House of Representatives concurred. The entry in the House of Representatives is, —

"'In the House of Representatives, Feb. 5, 1857.

"'*Resolved*, That the House of Representatives concur in the foregoing resolution of the Senate.'

"That resolution prescribed to the presiding officer simply this duty. The resolution provided for the appointment of a teller on the part of the Senate, and two tellers on the part of the House of Representatives. It required of those tellers to make a list of the votes as they should be declared; then 'that the result shall be delivered to the President of the Senate *pro tempore*, who shall announce the state of the vote, and the persons elected, to the two Houses assembled as aforesaid.' The President of the Senate, having received the list from the tellers, announced as the state of the vote, the state of the vote as it appeared on that list. In the list the vote of Wisconsin was assigned to John C. Fremont, and the Chair so read it. The presiding officer did no more than give the result as stated by the tellers, and then, in the further discharge of the duty devolved upon the presiding officer by the concurrent resolution, he announced the person who was elected, the Constitution providing that 'the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed.' The presiding officer in his own judgment believed then, as he believes now, that he declared correctly, as the state of the vote, that James Buchanan had received the greatest number, and that that number was a majority of the whole number of electors, not undertaking to decide, and not having decided, whether the vote of the State of Wisconsin had been given to John C. Fremont or not, — a power that the Chair utterly disclaims and never asserted."

1861. At the election of Abraham Lincoln, in 1861, the President of the Senate rose and said: "'The two Houses being assembled in pursuance of the Constitution, that the votes may be counted and declared for President and Vice-President of the United States for the term commencing on the 4th of March, 1861, it becomes my duty under the Constitution to open the certificates of election in the

presence of the two Houses of Congress. I now proceed to discharge that duty.' The Vice-President then proceeded to open and hand to the tellers the votes of the several States for President and Vice-President of the United States. The votes having been opened and counted, the tellers, through Mr. Trumbull, reported the following as the result of the count," etc.

The Vice-President then said: "Abraham Lincoln, of Illinois, having received a majority of the whole number of electoral votes, is elected President," etc.

At the second election of President Lincoln the two Houses of Congress prescribed a mode of procedure at the counting of the votes for President and Vice-President, under which the three subsequent countings have been conducted. This rule, known as the twenty-second, prescribes that — 1865.

"The two Houses shall assemble in the Hall of the House of Representatives at the hour of one o'clock P. M. on the second Wednesday of February next succeeding the meeting of electors of President and Vice-President of the United States, and the President of the Senate shall be their presiding officer. One teller shall be appointed on the part of the Senate, and two on the part of the House of Representatives, to whom shall be handed as they are opened by the President of the Senate the certificates of electoral votes; and said tellers, having read the same in the presence and hearing of the two Houses then assembled, shall make a list of votes as they shall appear from the state of the certificates; and the votes having been counted, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote and the names of the persons, if any, elected, — which announcement shall be deemed a sufficient declaration of the persons elected President and Vice-President of the United States, and, together with a list of votes, be entered on the journals of the two Houses. If upon the reading of any such certificate by the tellers any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall in like manner submit said question to the House of Representatives for

its decision; and no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses, which being obtained, the two Houses shall immediately reassemble, and the presiding officer shall then announce the decision of the question submitted, and upon any such question there shall be no debate in either House; and any other question pertinent to the object for which the two Houses are assembled may be submitted and determined in like manner."

Only a week prior to the adoption of the twenty-second rule the two Houses had united in a joint resolution which declared that certain States — eleven in number — were not entitled to representation in the electoral college, because they had been and were, up to the 8th of November, 1864, in a state of armed rebellion against the Government, and that their electoral vote, therefore, should not be counted.

"Under the operation of this joint rule and joint resolution the canvass of votes was conducted. The Vice-President opened the certificates and handed them to the tellers, who reported that the certificates were in due form, and the amount of the vote of the several States as they were called. . . .

"When the tellers had ceased,

"Senator COWAN said: 'Mr. President, I inquire whether there are any further returns to be counted?'

"The Vice-President: 'There are not.'

"Senator COWAN: 'And if there are to be, I would inquire why they are not submitted to this body in joint convention, which is alone capable of determining whether they should be counted or not?'

"The Vice-President: 'The Chair has in his possession returns from the States of Louisiana and Tennessee; but, in obedience to the law of the land, the Chair holds it to be his duty not to present them to the convention.'

"Senator COWAN: 'I ask whether the joint resolution on that subject has become a law by having received the approval of the President of the United States?'

"The Vice-President: 'The Chair believes that the official communication of its approval by the President has not been received by either House. The Chair, however, has been apprised of the fact that the joint resolution has received the approval of the President.'

"Senator COWAN: 'Then, as a motion is not in order in this body, I suggest that the votes of Louisiana and Tennessee be counted, and that the convention determine the fact.'

"Mr. STEVENS: 'I do not think any question has arisen which requires the two Houses to separate. That, according to the wording of the joint resolution, can only be upon the reading of the returns which have been opened by the President of the convention.'

"Senator COWAN: 'I merely wish to say, that believing as I do that it rests with this joint convention in its joint capacity to determine all questions which ought to arise here, I have done what I thought to be my duty in bringing to the attention of the convention the question which I have raised. Having done so, I now beg leave to withdraw it.'

"By the President: 'The Chair did not understand the Senator from Pennsylvania [Mr. Cowan] as making any distinct motion, but merely a simple suggestion.'

"Senator COWAN: 'I understood that no motion could be entertained in this convention.'

"The Vice-President decided that motions could be entertained upon any matters pertinent to the purpose for which the convention had been assembled; but the decision of those motions must be determined by the two Houses separately, after the Senate shall have withdrawn from the convention.

"Mr. YEAMAN, of Kentucky, then moved that all the returns before the joint convention be opened and presented for its consideration.

"The Vice-President decided that that would require the two Houses to separate for deliberation; whereupon, after short debate, Mr. Yeaman withdrew his motion.

"Senator TRUMBULL then, on the part of the tellers, announced the following as the result of the vote for the President and Vice-President of the United States," etc.

At this election the two Houses prescribed the course of procedure to be pursued. The two Houses decided that eleven electoral votes should not be counted. In express obedience to these resolutions of the two Houses, the Vice-President omitted to open and read the certificates of those votes which he had been forbidden to open; and Senator Cowan, who complained that the certificates of certain States had not been read, put his complaint distinctly upon the ground that the two Houses in

joint convention were "alone capable of determining whether they should be counted or not," — a proposition to which the President of the Senate not only assented, but which he relied upon for the justification of his ruling; having, as he correctly claimed, obeyed the express directions of the two Houses.

1869. At President Grant's first election the President of the Senate, on taking the Speaker's chair, said:

"'The Senate and House of Representatives having met, under the provisions of the Constitution, for the purpose of opening, determining, and declaring the votes for the office of President and Vice-President of the United States for the term of four years commencing on the 4th of March next, and it being my duty, in the presence of both Houses thus convened, to open the votes, I now proceed to discharge that duty.'

"The President *pro tempore* then proceeded to open and hand to the tellers the votes of the several States for President and Vice-President, commencing with the State of New Hampshire. One of the members called for a reading in full of the certificate of the returns of the vote of Louisiana, and objected to the counting of the vote from that State. Thereupon the Senate retired from the hall. On the question of counting the vote of Louisiana in the House, there were 137 yeas to 63 nays. The messenger from the Senate having announced that that body had also voted in favor of counting the vote of Louisiana, the Senate in a body re-entered the hall.

"The President of the Senate, having resumed the chair, said: 'By a concurrent resolution of the two Houses, the vote of Louisiana is ordered to be counted.'

"The tellers went on with their counting till the State of Georgia was reached.

"Mr. Butler objected to the vote of the State of Georgia being counted.

"Senator Edmunds said that the objection of the gentleman from Massachusetts was not in order, the two Houses having, by special rule for this case, made a substantial change in the standing joint rule, which joint rule reads as follows: —

"'On the assembling of the two Houses, on the second Wednesday of February, 1869, for the counting of electoral votes for President and Vice-President, as provided for by law under joint rules for counting or omitting to count the electoral votes, if any which may be presented as of the State of Georgia, shall not essentially

change the result, in that case they shall be reported by the President of the Senate in the following manner: —

"'Were the State presented as the State of Georgia to be counted, the result would be, for ——, for President of the United States, —— votes; if not counted, for ——, for President of the United States, —— votes; and in either case —— is elected President of the United States. And in the same manner for Vice-President.'

"Mr. Butler insisted that, under the Constitution, the votes must be counted or rejected by the convention of the two Houses, and that the prior concurrent action of the Senate and of the House cannot bind the convention, and the convention may act after they get together as they choose to do.

"The Senate retired, and the House decided against counting the electoral vote of the State of Georgia, — yeas 41, nays 150.

"At half-past four the Senate in a body re-entered the hall.

"The President: 'The objections of the gentleman from Massachusetts are overruled by the Senate; and the result of the vote will be stated as it would stand if the vote of the State of Georgia were counted, and as it would stand if the vote of that State were not counted, under the concurrent resolution of the two Houses.'

"Senator Conkling, one of the tellers, then proceeded to declare the result, amid great noise and disorder.

"The President: 'The tellers report that the whole number of votes cast for President and Vice-President of the United States, including the votes of the State of Georgia, is 294, of which the majority is 148. Excluding the votes of the State of Georgia, it is 285, of which the majority is 143. The result of the vote as reported by the tellers for President of the United States, including the State of Georgia, is, for Ulysses S. Grant, of Illinois, 214 votes; for Horatio Seymour, of New York, 80 votes. Excluding the State of Georgia, the result of the vote is, for Ulysses S. Grant, of Illinois, 214 votes; for Horatio Seymour, of New York, 71 votes. [Same for Vice-President.] Wherefore, in either case, whether the votes of the State of Georgia be included or excluded, I do declare that Ulysses S. Grant, of the State of Illinois,' etc."

At the second election of President Grant, in 1873, the Vice-President, on taking the Speaker's chair, said: — 1873.

"'The Senate and House of Representatives having met under the provisions of the Constitution for the purpose of opening, determining, and declaring the votes cast for President and Vice-President of the United States for the term of four years, commencing on the 4th of March next, and it being my duty, in the

presence of both Houses thus convened, to open the votes, I now proceed to discharge that duty.'

"The Vice-President then proceeded to open and hand to the tellers the votes of the several States for President and Vice-President of the United States, commencing with the State of Maine.

"When the State of Georgia was reached, objection was made by Mr. HOAR, who said: 'I desire to make the point that the three votes reported by the tellers as having been cast for Horace Greeley, of New York, cannot be counted, because the person for whom they purport to have been cast was dead at the time of the assembling of the electors in that State.'

"The point was reserved until the other States had been called and the objections reduced to writing; and then the Senate withdrew for deliberation.

"At 3.35 P.M. the Senate returned to the hall, and the Vice-President said: 'Upon the first point raised by the Representative from Massachusetts [Mr. Hoar], the Senate decided as follows: —

"'"*Resolved*, That the electoral votes of Georgia cast for Horace Greeley be counted."

"'The House of Representatives decided as follows: —

"'"*Resolved*, That the votes reported by the tellers as having been cast by the electors of the State of Georgia for Horace Greeley, of New York, as President of the United States, ought not to be counted, the said Horace Greeley having died before said votes were cast."

"'Upon this question there is a non-concurrence of the two Houses.

"'On the question submitted by the Senator from Illinois [Mr. Trumbull] in regard to the votes of the State of Mississippi, the Senate adopted the following resolution: —

"'"*Resolved*, That the electoral vote of the State of Mississippi be counted."

"'And the House of Representatives adopted the following resolution: —

"'"*Resolved*, That in the judgment of this House the eight votes reported by the tellers as cast by the electors in and for the State of Mississippi ought to be counted as reported by them."

"'On this question the votes of the two Houses are concurrent.

"'On the third point, raised by the Representative from New York [Mr. Potter], which was in regard to the election of one

elector from Mississippi, the Senate adopted the following resolution, which is covered also by its action on the full vote of the State: —

"'"*Resolved*, That the vote cast by James J. Spellman, one of the electors for the State of Mississippi, be counted."

"'The House of Representatives adopted the following resolution: —

"'"*Resolved*, That the electors of the State of Mississippi, having been appointed in the manner directed by the Legislature of that State, and in accordance with the provisions of the Constitution of the United States, were legally elected, and that the vote of the State as cast by them should be counted, and that the certificate of the Governor of that State of the electoral vote cast, and the certificate of the Secretary of State of that State in regard to the choice of electors, are in compliance with the Constitution and laws of the United States."

"'Therefore, by the twenty-second joint rule, there being a nonconcurrence between the two Houses upon the three votes cast in the State of Georgia for Horace Greeley for President of the United States, they cannot be counted; and in accordance with the same joint rule, the votes of the State of Mississippi will be counted.'

"The tellers resumed the counting of the votes, and announced the same, until the State of Missouri was reached, when Senator MORTON made an objection to two of the electoral votes from the State of Georgia. The Vice-President held that the objection came too late; that it should have been made when the State of Georgia was called. He finally, however, decided that it was in time, the credentials of no other State having yet been read.

"After several other objections had been made, the Senate again withdrew for deliberation, and returned at five minutes past five. The Vice-President, having resumed the chair: 'Two objections having been made to the counting of the votes of the electors of the State of Texas, the Senate upon the first objection, made by the Senator from Illinois [Mr. Trumbull], resolved as follows: —

"'"*Resolved*, That the electoral vote of the State of Texas be counted, notwithstanding the objection raised by Mr. Trumbull."

"'And the House of Representatives resolved as follows: —

"'"*Resolved*, That in the judgment of this House the vote of Texas should be counted as reported by the tellers."

"'On the second objection, by Mr. DICKEY, the Senate resolved as follows: —

"'"*Resolved*, That the objection raised by Mr. Dickey to counting the electoral vote of the State of Texas be and the same is overruled."

"'And the House of Representatives resolved as follows: —

"'"*Resolved*, That a quorum is an arbitrary number which each State has the right to establish for itself; and as it does not appear that the choice of electors was in conflict with the law of Texas as to a quorum for the transaction of business, the vote of the electors for President and Vice-President be counted."

"'So (the two Houses having concurred) the electoral vote of Texas, under the twenty-second joint rule, will be counted.'

"The Senate retired again for deliberation upon objections to the electoral votes from Arkansas and Louisiana.

"The Vice-President, having resumed the chair, said: 'The objection made by the Senator from Arkansas to the counting of the electoral vote of that State as declared by the tellers having been considered by the two Houses, the Senate has resolved as follows: —

"'"*Resolved*, That the electoral vote of Arkansas should not be counted."

"'And the House has resolved as follows: —

"'"*Resolved*, That the electoral vote of the State of Arkansas, as reported by the tellers, be counted."

"'There being a non-concurrence of the two Houses on this question, the vote of Arkansas, in accordance with the provisions of the twenty-second joint rule, will not be counted. That rule provides that —

"'"No question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses."

"'The several objections made on various grounds to the counting of the electoral votes from Louisiana having been considered by the two Houses, the Senate has resolved as follows: —

"'"*Resolved*, That all objections presented having been considered, no electoral vote purporting to be that of the State of Louisiana be counted."

"'And the House has resolved as follows: —

"'"*Resolved*, That, in the judgment of this House, none of the returns reported by the tellers as electoral votes of the State of Louisiana should be counted."

"'On this question there is a concurrence of the Houses, and the electoral votes of Louisiana will not be counted. The tellers will now announce the result of the vote.'

"Senator SHERMAN (one of the tellers) announced the result as follows, etc.

"The Vice-President then said: 'The whole number of electors to vote for President and Vice-President of the United States, as reported by the tellers, is 366, of which the majority is 184. Of these votes 349 have been counted for President, and 352 for Vice-President of the United States. The result of the vote for President of the United States, as reported by the tellers, is, — for Ulysses S. Grant, of Illinois, 286 votes, etc.; wherefore I do declare that Ulysses S. Grant, of the State of Illinois, having received a majority of the whole number of electoral votes, is duly elected President,'" etc.

It is to be observed that at every stage of this election the final authority to decide all the questions in debate is conceded to be in the two Houses, or in their agents, the tellers.

Federal officers chosen as electors.

The only case in which the validity of a certificate given to an elector chosen while holding an office under the Federal Government that has arisen or upon which the two Houses of Congress may be said to have expressed any opinion, occurred at the election of Martin Van Buren, in 1837.

It was ascertained that there were three individuals in North Carolina, one in New Hampshire, and one in Connecticut, elected to the electoral college who bore the same names with those individuals who were deputy postmasters under the General Government; and they were presumed to be the same individuals.

Mr. Clay moved that the joint committee appointed to report the mode of examining the votes for President and Vice-President should ascertain whether any votes were given at

that election contrary to the prohibition contained in the Constitution against Federal officers acting as electors.

Mr. Grundy, from the committee, reported to the Senate that "there were four or five electors chosen in the several States who were officers of the General Government, and that such votes were, in the opinion of the committee, not in conformity with the provisions of the Constitution; but at the same time the few votes thus given will not vary the result of the election, as it was not contemplated by any one that the appointment of one ineligible elector would vitiate the vote of his State."

Mr. Thomas, from the committee on the part of the House, in reply to the suggestion that the electors had resigned their Federal appointments before they gave their votes, said "that the committee came unanimously to the conclusion that these electors were not eligible at the time they were elected, and therefore the whole proceeding was vitiated *ab initio*."

In accordance with these views, he reported from the committee that the defect of such a choice would not be cured by the resignation of the Federal office. "The committee are of opinion," runs the report, that "the second section of the second Article of the Constitution, which declares that 'no senator, or representative, or person holding an office of trust or profit under the United States shall be appointed an elector,' ought to be carried in its whole spirit into rigid execution, in order to prevent officers of the General Government from bringing their official power to influence the elections of President and Vice-President of the United States. This provision of the Constitution, it is believed, excludes and disqualifies deputy postmasters from the appointment of electors; and the disqualification relates to the time of the appointments; and that a resignation of the office of deputy postmaster, after his appointment as elector, would not entitle him to vote as elector under the Constitution." This was the only instance in which the question of the ineligibility of electors on this ground has been raised since the Constitution has been in force.

At every presidential election since the first, down to 1865, the tellers were instructed by the two Houses not only "to make a list of the votes," but also to deliver "the result" to the President of the Senate, which result he was required to announce to the two Houses. The language, which became a formula for more than seventy years, and was first reported by Senator Rufus King, of New York, at the second election of Washington, in 1793, requires that the tellers "make a list of the votes as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote and the persons elected to the two Houses assembled as aforesaid."

"To make a list of the votes."

The twenty-second rule, adopted in 1865, required the appointment of tellers, "to whom shall be handed, as they are opened by the President of the Senate, all certificates of electoral votes; and said tellers, having read the same in the presence and hearing of the two Houses thus assembled, shall make a list of the votes as they shall appear from the said certificates; and the votes having been counted, a list of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote and the names of the persons elected," etc.

At the first election of General Washington, which was conducted very informally and without a preliminary committee of procedure, the Senate notified the House that they had "appointed one of their members to sit at the clerk's table to make a list of the votes as they shall be declared; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose."

The phrase "to make a list of the votes," employed by the committee to define the duty of the tellers, doubtless ought to be considered as the equivalent of "counting the votes." It is obviously borrowed from the Second Article of the Constitution, which reads as follows: —

"The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an

inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government," etc.

Here the whole function of ascertaining the validity and counting the votes for the candidates is devolved upon the electors by the phrase which requires them "to make a list of the persons voted for." The employment of that form of speech in the resolution above cited, therefore, was not an accident, and has its weight in determining the function which the two Houses of Congress assigned to the tellers or to those who selected them on this occasion.

Independent power of the two Houses in counting electoral votes.

Each of the two Houses has always maintained its separate and independent right to act affirmatively upon every vote to entitle it to be counted. Whenever both Houses failed to agree upon counting it, the vote has never been counted.

At the second election of Monroe, in 1821, the joint committee of the two Houses on the mode of counting the votes, in anticipation of an irreconcilable difference of opinion about the admission of Missouri, and to avoid a collision from which no good seemed likely to come, adopted the following resolution: —

"*Resolved,* That if any objection be made to the votes of Missouri, and the counting or omitting to count which shall not essentially change the result of the election, in that case they shall be reported by the President of the Senate in the following manner: —

"Were the votes of Missouri to be counted, the result would be for A. B. for President of the United States, —— votes; if not counted for A. B. as President of the United States, —— votes; but in either event, A. B. is elected President of the United States: and in the same manner for Vice-President."

In reply to the objection that this was practically not counting the electoral vote, Mr. Clay, who, as chairman of the committee, had reported the resolution, said "that the difficulty is before us; that we must decide it when the two Houses meet, or avoid it by some previous arrangement. The committee,

being morally certain that the question would arise on the votes in joint meeting, thought it best, as he had before stated, to give it the go-by in this way. Suppose this resolution not adopted, the President of the Senate will proceed to open and count the votes; and would the House allow that officer, singly and alone, thus virtually to decide the question of the legality of the votes? If not, how then were they to proceed? Was it to be settled by the decision of the two Houses conjointly, or of the two Houses separately? One House would say the votes ought to be counted, the other that they ought not; and then the votes would be lost altogether. Would the gentleman from New York prefer that it be decided in joint meeting? In that case he would find himself in a much leaner majority than on the question yesterday. In fact, Mr. Clay said, there was no mode pointed out in the Constitution of settling litigated questions arising in the discharge of this subject; it was a *casus omissus;* and he thought it would be proper either by some act of derivative legislation, or by an amendment of the Constitution itself, to supply the defect."

In 1857 Mr. Seward corrected Senator Bigler for speaking of a meeting of the two Houses under the eighth article of the Constitution as "a convention." "Then I will say that the two Houses assembled," replied Mr. Bigler.

In the same way the vote of Michigan in 1837, like that of Missouri, was counted in the alternative.

The vote of Wisconsin was counted in substantially the same way in 1857.

In 1869 the vote of Georgia was counted in the alternative, and in 1873 three votes from Georgia and all the votes from Arkansas were not counted, in consequence of one of the Houses refusing to count the electoral vote of that State.

The two Houses have even carried the principle here illustrated so far as not to debate any question of difference in each other's presence. So soon as debate became necessary, the Senate uniformly withdrew to its own chamber if sitting in the House, and the House has withdrawn if sitting in the Senate

Chamber. In 1817, when Mr. Taylor from New York arose in the joint session, and addressing himself to the Speaker of the House, not to "the President of the Senate," was proceeding to state his reasons for objecting to the votes from Indiana being read and recorded, the Speaker interrupted him, and said that the two Houses had met for the purpose — the single specific purpose — of performing the constitutional duty which they were then discharging; and that while so acting in joint meeting they would consider no proposition nor perform any business not prescribed by the Constitution.

Mr. Varnum, of the Senate (addressing the President of the Senate), expressed his concurrence in the propriety of what had been stated by the Speaker; and for the purpose of allowing the House of Representatives to deliberate on the question which had been suggested, he moved that the Senate withdraw to their chamber.

The motion was seconded by Mr. Dana of the Senate; and the question being put by the President to the members of the Senate, it was unanimously agreed to, and the Senate withdrew accordingly.

After debate, the House sent a message to inform the Senate of its readiness to proceed with the counting.

The Senate soon after again entered the Representatives' Hall, when the Speaker informed them that the House of Representatives had not seen it necessary to come to any resolution, or to take any order on the subject which had produced the separation of the two Houses. The reading of the votes was then concluded.

In discussing the order of procedure at the election in 1821, Mr. King said: "He was opposed to the settlement of any litigated question in joint meeting, where the Senate as a body would be lost, and argued that whenever any such should arise, it would be always proper that the two Houses should separate."

At a later stage of the debate, Mr. King, of New York, in accordance with the opinions he had submitted, wished some

amendment introduced to prevent the mode of proceeding from being quoted as a precedent hereafter, — an amendment declaring that if any question should arise relative to any votes in joint meeting, the two Houses would separate to consider the case and not decide it jointly.

Mr. Barbour said that on the present occasion, as the election could not be affected by the votes of any one State, no difficulty could arise; and that it was his intention hereafter to bring the subject up, to remedy what he considered a *casus omissus* in the Constitution, either by an Act of Congress, if that should appear sufficient, or if not, by proposing an amendment to the Constitution itself.

Again, in 1821, when an objection was made by Mr. Livermore, of New Hampshire, to counting the votes of Missouri, the Journal of the Senate says: —

"Whereupon, on motion of Mr. Williams, of Tennessee, the Senate returned to its own chamber."

Afterward the Senate received a message from the House, that it was now ready to receive the Senate for the purpose of continuing the examination of the votes; and on motion the Senate returned to the joint session.

At the election in 1857 there was a question about receiving the vote of Wisconsin. To a remark of Mr. Letcher, the Vice-President said, "No debate is proper in the opinion of the presiding officer."

Mr. Crittenden, of Kentucky: "Do I understand the Chair to decide that Congress in any form has power to decide upon the validity or invalidity of a vote?"

The Presiding Officer: "The presiding officer has made no such decision, he will inform the Senator from Kentucky. The Chair considers that under the law and the concurrent order of the two Houses, nothing can be done here but to count the votes by tellers, and to declare the vote thus counted to the Senate and House of Representatives sitting in this chamber. What further action may be taken, if any

further action should be taken, will devolve upon the properly constituted authorities of the country, — the Senate or the House of Representatives, as the case may be. The Chair was misunderstood by the Senator from Kentucky."

There was such a diversity of opinion among the members about the ruling of the President of the Senate, that he invited a motion to withdraw. Senator Trumbull said: "A difficulty has arisen here; let us retire and consider it in the only constitutional way we can, and that is in separate bodies." In this case the motion to withdraw was only put to and voted on by the members of the Senate. They retired immediately upon its passage, and did not return. Neither the Senate nor the House could have acted much more independently of one another if each had been entirely alone. In the debate which ensued in the House, Humphrey Marshall insisted that "the Senate and House must act upon the question at issue as separate bodies, vote as distinct organizations, and when the vote is to be taken the Senate very properly retires to consult separately how the vote of the Senate shall be given upon the question, and its vote will then be announced by its own appointed organ. If you adopt any other construction of the Constitution, on the one hand you supersede the House, and place all power over the count in the hands of the President of the Senate; on the other hand, you destroy the just weight of the Senate, and may establish a precedent, by virtue of which at some future day a large body of representatives may set aside an election made by the people through the electoral college, and assume the power of bringing the election before the House of Representatives. I am therefore clear that the Houses meet as Houses, and no vote *per capita* can be taken. Still, I am sure that the duty of determining whether a vote shall be counted belongs to the Senate and House, and not to the President of the Senate; and it is a duty I insist we shall perform before the vote shall be counted."

At the second election of Lincoln, in 1865, the principle of the complete independence of each of the two Houses in can-

vassing the electoral votes, and the necessity of the affirmative vote of each to entitle a vote to be counted, was incorporated into a joint rule of the two Houses, where by the approval of the Executive it acquired all the moral authority of a law. This clause of the rule which covers the provision runs as follows: —

"If upon the reading of any such certificate by the tellers any question shall arise in regard to counting the votes therein certified, the same having been stated by the presiding officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and the Speaker of the House of Representatives shall in like manner submit said question to the House of Representatives for its decision; and no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses, which being obtained, the two Houses shall immediately reassemble, and the presiding officers shall then announce the decision of the question submitted; and upon any such question there shall be no debate in either House; and any other question pertinent to the object for which the two Houses are assembled may be submitted and determined in like manner."

Under the operation of this rule, at the three last Presidential elections (in 1865, 1869, and 1873), the two Houses have repeatedly separated for the purpose of debate.

So settled and invariable has been the practice of the two Houses to act separately on the question of counting a vote, and so general has been their practice to withdraw to their respective chambers for debate and decision, that the principle has been incorporated into every plan for regulating the mode of the counting by standing joint rules or by statute.

In the joint rule of 1865, which governed the counting in 1865, 1869, and 1873, the separate action of the two Houses is expressly provided.

The law proposed in 1800 contained a similar provision. So did the law which passed the Senate in 1875. So did the law which passed the Senate in 1876. The latter Bill contained this clause: —

"If upon the reading of any such certificate by the tellers any question shall arise in regard to counting the votes therein certified, the Senate shall thereupon withdraw, and said question shall be submitted to the body for its decision; and the Speaker of the House of Representatives shall in like manner submit said question to the House of Representatives for its decision."

Effect of disagreement of the two Houses.

The counting of a vote is an affirmative act. It involves the examination of the certificate, the reading it in the presence and hearing of the two Houses, the entering of the votes upon the list, and the enumeration of the vote in the footing which states the result. All these steps are affirmative acts.

In all cases where two persons or two bodies are required to concur in the doing of an act, and each has a discretion to do it or not, if they cannot agree, the act cannot be done. It is the familiar case of two judges who do not agree; and the result is that no judgment can be rendered.

The construction which has been uniformly adopted and acted on in respect to the counting of an electoral vote by the two Houses is, that if they do not concur affirmatively in favor of counting the vote, it cannot be counted.

Mr. Clay said, in 1821: "One House would say the votes ought to be counted, and the other that they ought not; and then the votes would be lost altogether."

The joint rule adopted in 1865, which governed three Presidential elections, in codifying the existing practice of the two Houses, expressly declared that "no vote objected to shall be counted except by the concurrent vote of both Houses."

The law proposed in 1800 for regulating the counting of electoral votes recognized the same principle as in operation unless it was controlled and changed by statute. The Bill introduced by Senator Morton, which passed the Senate in 1875 and in 1876, proposed to change this rule in cases where there should be but one return from a State, and to require the two Houses to concur in counting the vote, unless both

should agree in rejecting it; but that effect was to be produced by statute.

Joint ballot.

There is a respectable opinion manifested by individuals in many of the debates that the two Houses may be deemed to be one body for the purpose of counting the electoral votes, and may act together, the members voting *per capita*. But there has been no practice sanctioning such a conclusion; and no law has, nor has any provision of the Constitution, provided for the merger of the two bodies at any time or for any purpose. Doubtless the idea arises from the habit of the State legislatures, when the two Houses do not agree in an election, to attain a result by their meeting in joint ballot. Congress has by law provided that such an arbitrament shall be resorted to in order to solve a disagreement of the two Houses of the State legislatures in the election of United States senators.

This expedient has its suggestion in the absolute necessity of some remedy; and in the fact that this accords with the theory and spirit of our institutions, has been in most cases adopted by the State governments, and practised, to the satisfaction of everybody, and is the safest possible solution of a great practical difficulty.

In legislation, the independent action of the two Houses and their veto on each other, work little practical inconvenience. But in the choice of a public officer, without whom the government cannot go on, there must be found some mode of effecting an election. In the discussion of the Bill proposed in 1800 to regulate the counting of electoral votes and to determine the results of the Presidential election, an amendment was offered providing, in case of a disagreement between the two Houses in respect to the counting of a vote, that the question should be decided by a vote of the two Houses *per capita*.

On the 30th of April, 1800, the records state, "A motion of Mr. Gallatin was under consideration to insert, instead of the principle that in case of doubt the Houses should divide to their respective chambers to consider the qualification or disqualifi-

cation of a vote or votes from their joint meeting, if such questions should arise at counting of the votes, the following words: 'And the question of the exception shall immediately, and without debate, be taken by yeas and nays, and decided by a majority of the members of both Houses then present.'" The amendment was lost, — 44 to 46.

On the 1st of May the same amendment was again offered, and lost, — 43 to 46. Among those who voted for it were Albert Gallatin, Nathaniel Macon, John Nicholas, John Randolph, John Smilie, Joseph B. Varnum, and other lights of the party which supported Mr. Jefferson.

Cases of votes counted and votes refused to be counted by the two Houses.

The tellers being ministerial agents of the power that appoints, they have no authority to decide finally upon the admission or rejection of the electoral vote, nor is there an instance of their claiming such a right; but they are the agents of the two Houses of Congress, of which they are also members. The two Houses have always claimed, and repeatedly exercised, the right to pass upon and reject electoral votes, and always without reference to the opinion or wishes of the President of the Senate.

At the first election of Monroe, in 1817, objection was made, in the joint session of the two Houses, to counting the vote of Indiana, on the ground that it was not a State in the Union at the time the electors were chosen. Her vote, however, was counted, representatives for that State having already been admitted to seats in the Upper House.

At Monroe's second election, in 1821, objection was made in like manner to counting the votes of the State of Missouri, and for the same reason her votes were finally ordered to be counted in the alternative; as thus, — 231 votes for President Monroe, if the votes of Missouri are counted, and 228 if the votes of Missouri are not counted; Mr. Monroe in either case having a majority. *Non constat* that had her vote promised to affect the result it would not have been rejected. In the famous debate which took place on that occasion, —

"Mr. Clay said the Constitution required of the two Houses to assemble and perform the highest duty that could devolve on a public body, — to ascertain who had been elected by the people to administer their national concerns. In a case of votes coming forward which could not be counted, the Constitution was silent; but fortunately the end in that case carried with it the means. The two Houses were called on to enumerate the votes for President and Vice-President. Of course they were called on to decide what are votes. It being obvious that a difficulty would arise in the joint meeting concerning the votes of Missouri, some gentlemen thinking they ought to be counted, and others dissenting from that opinion, the committee thought it best to prevent all difficulty by waiving the question in the manner proposed, knowing that it could not affect the result of the election. As to the condition of Missouri, he himself thought her a State with a perfect moral right to be admitted into the Union, but kept out for the want of a ceremonious act which was deemed by others necessary to entitle her to admission. Though in his opinion a State in fact, yet not being so in form, her votes could not be counted according to form. He was aware that the question of her admission might come up and be decided in this very shape; for if Congress allowed her to vote for President and Vice-President, and counted her votes, it would be a full admission of the State into the Union. But the committee thought, as there were other and more usual modes of admitting the State into the Union, it was better not to bring up the question in the discharge of this solemn and indispensable duty, but to allow that ceremony to proceed if possible without difficulty or embarrassment."

At the election of Van Buren, in 1837, a like objection was made to receiving the electoral vote of Michigan. It also was finally counted, like that of Missouri, in the alternative, as it could have no practical effect upon the result.

At the election of Buchanan, in 1857, the vote of Wisconsin was objected to because, in consequence of a violent snowstorm, the election had been held the day after that prescribed by law. Her vote, however, was declared by the Vice-President as it was reported to him by the letters, in obedience to the specific instruction of the two Houses, and without any pretension himself to pass upon the validity or invalidity of the electoral certificates. The two Houses in this case separated with-

out formulating their decision as to the validity of such election.

At the beginning of the second session of the Thirty-eighth Congress, and immediately prior to the second election of President Lincoln, in 1865, a joint resolution was passed declaring that the inhabitants of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee had rebelled against the Government of the United States; had continued in a state of armed rebellion for more than three years, and were in a state of armed rebellion in November, 1864; and provided that these States should not be allowed representation in the electoral college for choice of President and Vice-President of the United States for the term of office commencing on the 4th of March, 1865, and that no electoral votes from any of those States should be received or counted.

In the debate to which this joint resolution gave rise, the power of the two Houses of Congress to exclude the electoral vote of the State, upon sufficient cause shown, was not questioned; the only doubt raised upon the subject being whether the House alone had the power to exclude the vote of a State.

This joint resolution received the formal approval of President Lincoln, communicated in the following Message to Congress, on the 10th day of February, 1865, only three days before the election: —

EXECUTIVE MANSION, Feb. 8, 1865.

To the Honorable Senate and House of Representatives.

THE joint resolution entitled, "Joint Resolution declaring certain States not entitled to representation in the electoral college" has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him.

In his own view, however, the two Houses of Congress, convened under the Twelfth Article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal; and it is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Execu-

tive to interfere in any way in the matter of canvassing or counting the electoral votes; and he also disclaims that by signing said resolution he has expressed any opinion on the recitals of the preamble, or any judgment of his own upon the subject of the resolution. ABRAHAM LINCOLN.

This is the first instance, it deserves to be remarked, in which the doctrine that the two Houses of Congress, "convened under the Twelfth Article of the Constitution," have complete power to exclude from counting "all electoral votes deemed by them to be illegal," received the full sanction of a law by the concurring approval of both Houses of Congress and the Executive. It is impossible that the traditional interpretation of the Twelfth Article of the Constitution should receive more authoritative confirmation.

At the first election of General Grant, in 1869, the votes of the electors of Louisiana were objected to on the ground that no valid election had been held there; her vote, however, was counted.

The electors from Georgia were objected to on four distinct grounds, — 1. Because the electors were not chosen on the day required by law, nor any excuse given for the neglect. 2. Because at the date of the election the State of Georgia had not been admitted to representation as a State in Congress since the rebellion. 3. Because she had not complied with the Reconstruction Act. 4. Because "the election was not a free, just, equal, and fair election, but that the people were deprived of their just right therein by force and fraud." Her vote was counted in the alternative.

At the second election of General Grant, in 1873, three votes cast in Georgia for Horace Greeley were objected to because Mr. Greeley was dead at the time such votes were cast. The two Houses not agreeing about the validity of these votes, they were not counted. It was also objected to all the electors from the State of Georgia that the certificate did not show that the electors voted by ballot. The certificate of the elector Spellman, from the State of Mississippi, was objected to because it

was not authenticated by the signature of the Governor. This objection was overruled by the joint vote of the two Houses. It was objected to the electors from Texas that they had no certificate authenticated by the Executive, and that four electors, less than half a majority, had presumed to fill the places of the four absentees who were elected. This objection also was overruled by the two Houses. The electors from Arkansas were objected to, — 1. Because the official returns showed that the electors claiming to represent the State had not been chosen. 2. Because the returns were not certified under the great seal of the State, according to law. The two Houses not concurring in the validity of these certificates, the vote of Arkansas was not counted.

Here we have the electoral votes of twenty-one States to which objections have been raised at different times by the two Houses in joint session. In four of these cases the objections were overruled; in three the votes were counted in the alternative; in thirteen the votes were excluded; and in one, that of Wisconsin, the objections were not passed upon. On the other hand, there is no instance of an objection being raised as to the validity of any electoral vote by the President of the Senate, nor of his expressing an official opinion as to the force or propriety of any objection raised in either House of Congress.

Summary.

1. The exclusive jurisdiction of the two Houses to count the electoral votes by their own servants, and under such instruction as they may deem proper to give on occasions arising during the counting, or by previous concurrent orders, or by standing joint rules, or by the formal enactments of law, has been asserted from the beginning of the Government; that exclusive jurisdiction has been exercised at every Presidential election from 1793, when a regular procedure was first established, until and including the last count of electoral votes in 1873. It was exercised by concurrent orders of the two Houses from 1793 to 1865, and by a standing joint rule in 1865, 1869, and 1873. Every counting at these twenty-one successive Presidential elections has been conducted under

and governed by the regulations thus imposed. Those regulations have prescribed every step in the procedure; have defined and regulated the powers of every person who has participated in any ministerial service in the transaction. They have controlled every act of the President of the Senate in respect to the counting except the single act of opening the packages of the electoral votes transmitted to him by the colleges, which is a special duty imposed on him by the Constitution. During all this long period the exclusive jurisdiction of the two Houses, exercised upon numerous successive occasions, has never in a single instance been the subject of denial, dispute, or question.

2. The President of the Senate, although he has regularly, in person or by some substitute appointed by the Senate, performed the constitutional duty of opening the electoral votes, has never, on any occasion or in any single instance, attempted to go a step beyond that narrow and limited function. In no instance has he ever attempted to determine what votes he should open, but has opened all, and submitted them to the action of the two Houses, unless required to omit particular votes by the concurrent orders of the two Houses, or by enactments in the form of laws in which the two Houses had concurred. Where duplicate or triplicate returns have been received (when returns from two sets of persons claiming to be electors), he has invariably opened and submitted all of them. As a mere temporary custodian, in the absence of the rightful owner, he has never assumed to withhold anything or delay anything. He has obeyed the orders of the two Houses as to every act which he has done during the counting, and as to the announcement of the footing of the tellers when they had enumerated the votes. He has performed such duties as have been imposed upon him by the concurrent orders of the two Houses, and none other; and he has performed those duties in the manner and under the instructions given by the order of the two Houses. In no single instance has he ever pretended to have any right to decide any question as to the authenticity or

validity of a vote, or to interfere with the tellers in the counting, or to determine what certificates or evidence of electoral votes should be submitted to the two Houses. He has acknowledged without reservation the most absolute authority of the two Houses over the whole subject, and recognized the fact that any function beyond the opening of the packages of certificates which he might exercise was derived from the two Houses and performed as their servant. In the whole history of the Government there is not a single exception to this established and continuous usage.

3. The two Houses have not only always exercised the power to count the electoral vote in such manner and by such agents as they might choose to do it exclusively, without interference from anybody else, but they have exercised the right to fix and establish the methods of procedure by standing rules. They have also asserted the right to prescribe a permanent method of counting the electoral votes. Whatever powers exist in the Federal Government for the purpose of ascertaining and determining the result of a Presidential election by a canvass of the electoral votes, the two Houses of Congress have always claimed to possess, and to possess exclusively, subject to such regulations by law as they might themselves concur in enacting; and they have always asserted the right of the law-making power of Government to legislate on this subject under the general constitutional grant of authority "to make all laws which shall be necessary or proper for carrying into execution" the "powers vested in the Government of the United States by any department or office there."

It has been several times proposed to regulate by act of Congress the mode of counting the electoral votes, of verifying the authenticity and validity of the votes, and determining the result of the Presidential election, so far as those powers are to be exercised by the two Houses. A Bill for this purpose was introduced and discussed in Congress early in the year 1800, when many of the persons who had participated in the forming

of the Constitution in the Convention of 1787, or in its ratification by the State conventions, were in Congress. Although differences of opinion as to what would be wise and safe regulations for the counting existed to such extent as to defeat any agreement upon the details of the measure, the debate failed to develop any question or doubt as to the exclusive authority of the two Houses to count the votes and to prescribe by concurrent action the mode of their counting. From the beginning to the end of the debate that authority was taken for granted. Among the prominent figures in that Congress were John Langdon, who at the organization of the Government in 1789 had acted as the special President of the Senate on the anomalous first counting, before any regular procedure had been devised; John Marshall, afterward Chief Justice; Albert Gallatin, who became famous as a publicist, as a statesman, and as a financier; and other men who had personal knowledge and fresh traditions of the meaning of the framers of the Constitution, and of the sense by which its provisions were interpreted and had been adopted by the States and the people. The assumption unanimously by Congress, eleven years after the Constitution was set in motion, that the two Houses possess full and exclusive powers in respect to counting the electoral votes, carries with it, therefore, the weight of the most distinguished contemporaneous exposition. That debate nowhere exhibits any question of the authority of the two Houses to count, and nowhere recognizes any power whatever on the part of the President of the Senate to count.

In 1875, and again in 1876, a Bill regulating the mode of counting was introduced into the Senate, and received a full and elaborate discussion in that body and the affirmative vote of a majority of the senators. On many occasions when the electoral votes were to be counted, or during the process, or in some debate to which it gave rise, the powers of the two Houses have been more or less discussed. While individual eccentricities of opinion or idiosyncrasies have exhibited themselves in the advocacy of the pretension on the part of the

President of the Senate to go theoretically beyond the limits of his constitutional duty in opening the packages of electoral certificates, such instances have never exceeded one in a hundred of the members of the two Houses; have never made any practical progress or exerted any practical influence on the opinion or conduct of the two Houses; have never interrupted or modified the uniform current of the precedents, or in a single instance inspired any incumbent of the chair of the Senate to the slightest spirit of enterprise toward the enlargment of his constitutional prerogative. On the other hand, the exclusive authority of the two Houses of Congress over the counting has been universally and uniformly assumed and taken for granted; and so often as the members have been tempted into any incidental mention of their opinions, the expressions asserting such exclusive power on the part of the two Houses have been overwhelming in numbers and in weight of authority.

In the mean time it is proper to observe — without finding it necessary or convenient on this occasion to discuss the exact limits of the powers of the two Houses in judging of the authenticity and validity of electoral votes or of the extent to which their investigations may be carried for that purpose — that the powers of the two Houses in this respect are not arbitrary powers, to be exercised at their own mere will, but are trust-powers, to be exercised under all the solemn obligations that belong to judicial discretion in the most august of human tribunals.[1]

[1] This document was followed by several pages of citations from the speeches and votes of the following prominent members of the Government at Washington, sustaining the positions that —

(1) The President of the Senate does not count the electoral vote under our Constitution; (2) That the two Houses count it; (3) That the two Houses decide what are votes, and upon the legality of the votes; (4) That the two Houses inspect the returns, each by its own chosen tellers; (5) That the two Houses may go behind the returns; (6) That allowing the President of the Senate to count the vote might prove fatal to the public peace, might enable one man to disfranchise a State, and even elect himself.

President Abraham Lincoln, Henry Clay and John J. Crittenden of Kentucky, John Sherman of Ohio, Edmunds of Vermont, Boutwell and Dawes of Massachusetts, Morton of Indiana, Thurman of Ohio, Logan and Trumbull of Illinois, Frelinghuysen of New Jersey, Conkling of New York, Christiancy of Michigan, Eaton of Connecticut, Maxcy of Texas, Howard of Michigan, Garrett Davis of Kentucky, Stewart of Nevada, Reverdy Johnson of Maryland, Cowan of Pennsylvania, Bingham of Ohio, Humphrey Marshall of Kentucky, R. M. T. Hunter of Virginia, Benjamin F. Butler of Massachusetts, John P. Hale of New Hampshire, Jacob M. Howard of Michigan, Jacob Collamer of Vermont, John Randolph of Virginia, Robert Toombs of Georgia, A. P. Butler of South Carolina, Charles E. Stuart of Michigan, James L. Orr of South Carolina, Wright of Iowa, Whyte of Maryland, Schuyler Colfax of Indiana, William H. Seward and Francis Kernan of New York, Saulsbury of Maryland, Merrimon of North Carolina, Israel Washburne, Jr., of Maine, Pugh of Ohio.

Eight years later, in the Presidential count of Feb. 11, 1885, the powers which in 1876–1877 had been offensively arrogated by and on behalf of Mr. Ferry, of Michigan, as President of the Senate, were by his fellow-partisan and successor in that office, Mr. Edmunds, of Vermont, explicitly disclaimed, as will be seen by the following extract from the "Congressional Record" of Feb. 12, 1885, pages 1683–84:

"COUNTING THE ELECTORAL VOTE.

"At 12 o'clock m. the Doorkeeper announced the Senate of the United States.

"The Senate entered the hall preceded by its Sergeant-at-Arms and headed by the President and the Secretary of the Senate, the members and officers of the House rising to receive them.

"The President of the Senate [Mr. Edmunds] took his seat as presiding officer of the joint convention of the two Houses, the Speaker *pro tempore* [Mr. Blackburn] occupying the chair on the left of the Vice-President.

"The President of the Senate: 'The two Houses have met pursuant to the Constitution and the laws and their concurrent resolution for the purpose of executing the duty required by the Constitution and the laws in the matter of counting the electoral vote for President and Vice-President cast by the electors in the several States for the term commencing on the 4th of March, 1885. The tellers appointed by the two Houses will please take their places.'

"Mr. Hoar and Mr. Pendleton, the tellers appointed on the part of the Senate, and Mr. Clay and Mr. Keifer, the tellers appointed on the part of the House, took their seats at the Clerk's desk, at which the Secretary of the Senate and the Clerk of the House also occupied seats.

"The President of the Senate: 'The President of the Senate will open the votes of the several States in their alphabetical order, and now opens the certificates from the State of Alabama and hands to the chairman of the tellers on the part of the Senate the certificate of Alabama received by mail, and to the chairman of the tellers on the part of the House of Representatives the certificate received by messenger. The certificate will be read.'

"Senator HOAR (one of the tellers) said: 'Mr. President, the tellers on the part of the Senate and on the part of the House of Representatives have ascertained the state of the vote of the electors of the respective States for the offices of President and Vice-President of the United States; and it appears that the whole number of electors appointed to vote for President and Vice-President is 401, of which a majority is 201. The state of the vote for President of the United States is, for Grover Cleveland, of the State of New York, 219; for James G. Blaine, of the State of Maine, 182. For Thomas A. Hendricks, of the State of Indiana, for the office of Vice-President of the United

States, 219; and for John A. Logan, of the State of Illinois, for the office of Vice-President, 182.'

"The President of the Senate: 'Senators, and Members of the House of Representatives, the tellers have reported to the presiding officer the state of the vote which you have heard, from which it appears that Grover Cleveland, of the State of New York, has received 219 votes for the office of President of the United States, and that James G. Blaine, of the State of Maine, has received 182 votes for the same office; that Thomas A. Hendricks, of the State of Indiana, has received 219 votes for the office of Vice-President of the United States, and that John A. Logan, of the State of Illinois, has received 182 votes for the same office.

"'Wherefore I do declare that Grover Cleveland, of the State of New York, has received a majority of the votes of the whole number of electors appointed, as they appear in the certificates read by the tellers, and so appears to have been elected President of the United States for four years, commencing on the 4th day of March, 1885; and that Thomas A. Hendricks, of the State of Indiana, has received a majority of the votes of the whole number of electors appointed, as they appear in the certificates read by the tellers, and so appears to have been elected Vice-President of the United States for four years, commencing on the 4th day of March, 1885. *And the President of the Senate makes this declaration only as a public statement in the presence of the two Houses of Congress of the contents of the papers opened and read on this occasion, and not as possessing any authority in law to declare any legal conclusion whatever.*'"

When the question of counting the electoral vote was presented by itself and under conditions which offered no temptation to magnify the presiding senator's office, Congress seems never to have had any serious difference of opinion on this subject, agreeing almost unanimously with Senator Edmunds as he expressed himself in announcing the vote for Cleveland and Hendricks, — that the presiding officer of the Senate had authority only to open and state the contents of the returns produced before him, but no authority to declare any legal conclusion from them whatever.

LVII.

The four electoral votes of the State of Florida cast at the Presidential election of 1876 were contested before the two Houses of Congress assembled to count the electoral vote. The first canvass of the Board of State Canvassers was set aside by order of the Supreme Court on the application of Drew, the Democratic candidate for governor, and he was duly installed. Both canvasses were subsequently set aside by an act of the Legislature for alleged irregularities, and a new canvass ordered according to rules prescribed by the Supreme Court. By this canvass it appeared that the Tilden electors had the highest number of votes. The Governor's certified lists, required by statute, were not furnished on or before the day on which "the electors were required to meet for the purpose of casting and certifying their votes," but after that day. The following brief was prepared by Mr. Tilden to show that want of punctuality in furnishing these lists could be and was cured by other evidence.

BRIEF ON THE FLORIDA ELECTORAL VOTE.

1. The Constitution of the United States does not prescribe the evidence of the appointment of electors. It does not require certified lists or certificates from the governor that persons claiming to have been appointed as electors have in fact been so appointed. It does not require any particular form of proof. It is wholly silent in respect to the evidence by which such an appointment is to be authenticated.

2. In delegating to the "State" the appointment of electors, and to the legislature of that State the authority to "direct" the "manner" in which such appointment shall be made, the Constitution seems to contemplate that the proof of the appointment should, in the first instance at least, be furnished by the State, and its nature and form prescribed by the legislature of the State. "Each State," it declares, "shall appoint in such manner as the legislature thereof may direct" the electors. It is natural that the power authorized to do an act and to determine the manner in which that act is to be done, should also provide for verifying its own act and showing that it was done in the proper manner. The legislative power of the State, in directing the manner in which the act is to be done, might properly direct also the mode of proving that such manner had been followed.

The primary and best authority as to what the State has done, is the State itself. Its own declarations through its legislative and judicial organs are the most weighty testimony which can be offered.

3. The statute of 1792 provided that "It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required, by the preceding section, to meet;" and one of these lists was directed to be annexed by the electors to each certificate of their votes.

This provision, so far as the State executive is concerned, is little more than a request to the governor to make such lists; for there is no mode of compelling him to perform the duty.[1] Its real effect is to provide by Act of Congress convenient evidence of the appointment of the electors to be considered by the two Houses of Congress when they come to examine and count the votes. The Act nowhere goes beyond that; it does not make this evidence indispensable; it does not make this evidence conclusive; it does not make this evidence exclusive; it does not shut out other evidence; it does not limit the discretion or fetter the judgment of the authority having the power to count the votes and to decide between several sets of papers, purporting to be votes, as to which are in truth genuine and valid votes.

Suppose the governor's certified lists should happen to have been unattainable at the time the electors voted; suppose that accident, disability, or death intervened; or that the governor's conscientious judgment on the case, or his wilful refusal to perform his duty, deprived the electors of this evidence. Are their votes to be destroyed?

Or suppose that by mistake or fraud the governor should give the certified lists in favor of persons who were not appointed electors, and should withhold them from the true electors. Is there no remedy? Must the State lose its votes? Must the State submit to have its votes cast against its real will, as if by a false personation, made before its eyes in the open day, but which it has no power to resist?

The answer is, that the authority commissioned to count the

[1] See Note D., *post*, p. 479.

votes, and, in doing so, to determine what are authentic and valid votes entitled to be counted, will receive other evidence besides the governor's certified lists, which evidence may prevail over that certificate; and will receive evidence impeaching the truth of that certificate for mistake or fraud. The tribunal might act on the petition of the persons claiming to have been duly appointed electors, and wrongfully interfered with in the exercise of their functions, for it is not limited as to the sources of the evidence it will accept, but especially will it receive evidence from the State itself.

Evidence of the appointment of the Tilden electors.

The evidence that Wilkinson Call, James E. Yonge, Robert B. Hilton, and Robert Bullock — or the Tilden electors, as we shall for convenience call them — were duly appointed by the State of Florida, in the manner the Legislature of that State had directed, is complete and conclusive.

Governor's certified lists.

The only defect which can be alleged in the evidence in their favor is that the governor's certified lists, specified by the Act of 1792, was not furnished "on or before the day on which" they were required to meet for the purpose of casting and certifying their votes, and therefore was not at that time annexed to their statements of their votes, but that the governor's certified lists were furnished and annexed after that day.

Governor's certified lists not essential.

It has already been shown that the permanent absence of the governor's certified lists is not fatal to the validity of the vote of the electors, and that this piece of evidence is not made indispensable or conclusive or exclusive, or invested with any particular force or effect by the statute which provides it. The terms of the statute are remarkable. They do not even say that the certified lists shall be required by anybody or as a condition of anything to be done, but are a mere imposition of a "duty" upon the State executive to furnish the lists, with only the moral force of a recommendation. Language could not be chosen fitter to make the injunction fall within the class called in legal parlance directory, as contradis-

tinguished from mandatory, — the neglect of which works no invalidity in the act done, but only an omission of duty on the part of the officer who ought to have complied with the direction; and in this instance the injunction is not addressed to the electors who cast the votes or to the tribunal which counts the votes, but only to a third party to do an act for the convenience of the electors and the counting tribunal. There can be no doubt, then, that the permanent absence of the governor's certified lists would work no invalidity of the votes of the electors.

Still less can delay in receiving the governor's certified lists — which the electors have no legal power to obtain, but are wholly dependent on the voluntary action of the governor — or a consequent delay in annexing such lists to the electors' statement of their votes, until the day fixed for the meeting of the electors had elapsed, work an invalidity of the votes, or indeed produce any legal consequence whatever.

Statutory specification of time for delivery of certified lists directory.

The reason the governor is directed to furnish his lists on or before the day the electors meet was doubtless in order that the electors might not be hindered in annexing the lists to their statements of the votes if they choose to do so on the first day of their meeting.

The first Wednesday in December is fixed by the statute for the meeting of the electors. The delivery of the statement by the electors of their votes by messenger to the President of the Senate at the seat of government is to be made at any time before the first Wednesday in January. Thirty days are thus allowed for transmission and delivery. No doubt it would be a perfect compliance with this provision if the electors' statement of their votes were made out, and the lists of the governor obtained and annexed at any time, so that the delivery should be made within the thirty days. It is true that the statement of the votes to be forwarded by mail, and the statement to be deposited with the district judge, are required to be sent forthwith; but the one transmitted by the messenger

would be good if the others were never received or never sent. How little the statute regards the times specified in it as of the essence of the transaction, is illustrated by the provision directing that whenever neither the statement sent by messenger nor that sent by mail shall have been received at the seat of government on the first Wednesday in January, the Secretary of State shall send a messenger to the district judge, and that he shall forthwith transmit the copy deposited with him to the seat of government.

No time is fixed by any of the statutes for the arrival at the seat of government of the statement deposited with the district judge. No doubt if it were received at any time before it was to be used in the counting of the votes, that would be sufficient. The vote could not be objected to because it had not arrived earlier.

Taking all the statutory provisions together, they exhibit careful precautions that the votes shall be received before the count. The Tuesday after the first Monday in November — falling this year on the 7th of November — is fixed for the appointment of electors. The first Wednesday in December — falling this year on the 6th of December — is fixed for the meeting of the electors. They are required to make out three statements of the votes and to transmit one by messenger and one by mail, and to deposit the third with the district judge of the United States for the district in which the electors shall have assembled. The first Monday in January — falling this year on the first day of January — is fixed for the arrival of the transmitted statements at the seat of government, which are to be received by the President of the Senate, or, in his absence, by the Secretary of State as temporary custodian. If the two transmitted statements fail of arriving before the first Monday in January, the Secretary of State is directed to take measures to supply the default by means of the statement deposited with the district judge: but no time is fixed for the arrival of that statement, because no subsequent act is dependent on it, and no provision is made to supply the failure of

that expedient; and the second Wednesday in February — falling this year on the 14th of February — is fixed for the counting of the votes. The times fixed would be this year as follows: Appointment of electors, November 7. Meeting of electors, December 6. Arrival of transmitted statement of votes, January 1. Counting of the votes, February 14.

The specifications of the times at which or before which acts shall be done to furnish evidence to the counting tribunal as to who have been appointed electors and for whom those electors have voted, are merely directory. The times are fixed so that each act shall be done in season to enable the next step to be promptly taken, and in season to enable any failures to be remedied. These limitations of time are precautionary and remedial. They are intended to save and give effect to the votes. They are not snares to betray and destroy the votes.

The act of the governor in furnishing certified lists containing the names of the electors; the act of the electors in annexing these certified lists to the statements of their votes; their acts in making out and signing the statements of their votes, in transmitting one set by messenger and another by mail, and in depositing the third set with the judge; the act of the Secretary of State in notifying the district judge; and the act of the district judge in transmitting the set deposited with him, — are each and all acts of this nature, intended to furnish evidence of the appointment and votes of the electors. The times when these acts should be done are expressly specified, except in the case of the Secretary of State. But if these acts should not have been done within the times specified, but should be done afterward in season for their object, these acts would not be void, but would be valid and effectual. Take an illustration.

The district judge, who in the event that the other sets of statements have failed to arrive by the 1st of January is to transmit the set deposited with him, is required to do so "forthwith."

If he have prompt notice, some six weeks would intervene before the packages could be opened for the counting. If he should happen to transmit them on the last of the six weeks, instead of the first, will anybody suggest that his act would be void, and the votes should not be counted?

The Constitution commands the electors to seal up their statements of their votes, and orders that the seals shall be broken only in presence of the two Houses when the votes are to be counted. To have them in the possession of the President of the Senate ready to be opened at that time is the object; and all the provisions fixing the times when the acts of preparation and transmission shall be successively done, are intended to insure that object. They are designed for that purpose, and for nothing else. There is no possible utility in having these papers in the hands of their depositaries before they can be opened and used, except to make it certain that they will be there when they are needed for use on the count.

Certified lists furnished afterward effectual.

Such acts of public officers, if not done within the time prescribed by law, do not thereby become incapable of being done afterward. They not only remain capable of being done, but the duty of the public officers to do them subsists in full vigor and obligation, and the right to compel their performance by the public officers accrues for the very reason that the time limited by law has passed. Mandamus, resorted to in innumerable instances to coerce by the mandate of judicial courts the performance by public officers of acts enjoined on them by law, begins by alleging that the time fixed by law for the doing of the acts has elapsed. It is on that very ground that the judicial power is invoked. Such is the general doctrine of our jurisprudence and the settled construction of the effect of statutes fixing the time within which official acts shall be done, adopted by courts and governments.[1]

But in the present instance the same result is also established by an enabling and remedial statute, enacted by a legislative power having competent jurisdiction over the subject.

[1] See authorities cited *post*, pp. 463 to 466, and Note A, *post*, p. 475.

That statute of the State of Florida authorizes and directs the governor of that State to make and certify in due form, and under the great seal of the State, three lists of the electors named in the Act, and to transmit the same to the President of the Senate of the United States, and also to make and certify three other like lists, and to deliver them to the said electors, who are required to meet and make out new statements of their votes cast on the 6th of December, 1876, and to annex thereto the said certified lists of the governor, and the same to transmit and forward to the President of the Senate and deliver to the district judge in the manner provided by law. And the statute further enacts that the said certified lists of the governor and statements of the votes of the electors "shall be as valid and effectual to authenticate in behalf of this State the appointment of such electors by this State as if they had been made and delivered on or before the 6th day of December, 1876, and had been transmitted immediately thereafter."

Curative statute.

Of the competency of the legislative power of the State of Florida to pass a curative statute of this nature, and of the complete efficacy of that statute to remedy such an informality, there can be no doubt. It is simply allowing and requiring a piece of evidence to be supplied after the time within which the law required the public officers to furnish it, but before it is needed for the use intended. It is allowing an act to be done *nunc pro tunc* in furtherance of right and justice, as courts sometimes do; curing a defect of form which the law-making power has a large jurisdiction to do, and frequently and habitually does.

Not only is such a statute clearly within the power of the Government of Florida, under the general authority in respect to appointing electors for the said State conferred by the Constitution of the United States, but it is in perfect harmony with the policy indicated by the Federal Government and the rights on the part of the States over this subject, which are recognized in or granted by the legislation of the Federal Government.

In addition to the precautions against and remedies for neglects and omissions provided by the Acts of 1792 and 1804, which have been already mentioned, the statute of 1845 affords an illustration of the same policy and purpose. That Act was intended to execute the power conferred on Congress by the Constitution to "determine the time of choosing the electors" by fixing a uniform day in all the States. But the first proviso, now re-enacted as Section 134 of the Revised Statutes, provided for supplying vacancies happening otherwise than by non-election "which may occur in its college of electors when such college meets to give its electoral vote."

And the second proviso — substantially re-enacted as Section 135 of the Revised Statutes — provided for supplying vacancies happening from non-election as follows: "Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such manner as the legislature of such State may direct."

If a State by its legislature may, by itself appointing, or by providing for the appointment of electors, remedy a total failure of election at the time and in the manner prescribed by Act of Congress in pursuance of an express authority of the Constitution, and may do so after that failure has actually happened, much more may it remedy a delay or omission of a specific piece of evidence of the appointment of electors, not in itself regarded by law as of much significance or value, and not made necessary or conclusive or exclusive, or even expressly, but only by implication, made evidence at all.

The illegal prior lists.

If the lists made and certified by Governor Drew under this statute would be valid and effectual in the absence of any competing documents, the existence of the prior certified lists can make no difference. Such prior lists are impeached by a statute enacted by the law-making power of the State of Florida testifying to the counting tribunal and declaring that such prior competing lists are illegal, and consequently void.

That statute adduces the most absolute proof that such prior lists are false in fact; that the persons whose names are contained in them were not chosen electors according to the laws of Florida; that such persons did not receive the highest number of votes for the electoral offices at the election held on the 7th of November, 1876; that the pretended canvass of the Board of State canvassers by which such persons were declared by such Board to have been elected, has been adjudged by the highest court of the State, after full argument and by a unanimous judgment, to be unlawful, and to be in truth no canvass; that, under an enabling statute, a canvass has been conducted in the manner approved and according to the rules prescribed by the Supreme Court, which showed that such persons had not, but that other persons actually had, the highest number of votes for the said electoral offices at the said election.

Acting on these facts, the Legislature of Florida has by statute declared, authenticated, enacted, confirmed, ratified, and renewed the appointment as electors of the said other persons who did receive the highest number of votes at such election, and who are shown by the aforesaid lawful and valid canvass to have been duly chosen. In the mean time, in an action of *quo warranto* duly brought in a court of competent jurisdiction, the said persons named in such prior and illegal certified lists, and called for convenience the Hayes electors, appeared and defended; judgment was rendered, ousting the said Hayes electors and affirming the title of the four other persons, who may for convenience be designated Tilden electors. The competing certified lists of the Hayes electors are thus effectually impeached and shown to be null and void.

The Supreme Court of the United States, speaking by Mr. Justice Story, in the Amistead Case (15 Pet., p. 594), said:

"What we proceed upon is this, — that although public documents of the Government, accompanying property found on board of the private ships of a foreign nation, certainly are to be deemed *prima facie* evidence of the facts which they purport to state, yet they are always open to be impugned for fraud; and whether that

fraud be in the original obtaining of these documents, or in the subsequent fraudulent and illegal use of them, when once it is satisfactorily established it overthrows all their sanctity and destroys them as proof. Fraud will vitiate any, even the most solemn transactions; and an asserted title to property founded upon it is utterly void."

The extent to which the courts go in the remedy of default in doing official acts within the time limited by law is illustrated by the following cases: Queen *vs.* St. Pancras, 11 Adolphus & Ellis, 15 (S. C. 39 Eng. Com. Law R., p. 38).

Facts. — A statute required that "on the day of annual election," fixed by the Act, inspectors should be nominated by the churchwardens and the meeting, and that after such nomination the parishioners should elect vestrymen, etc.

At a meeting held May 6, which was the statute day, the churchwardens, acting as chairman, prevented a fair choice of inspectors. A mandamus being moved for on June 6 to compel them to hold a new election, and cause shown on November 4, it was objected that the proceeding was too late.

Held on November 21 that the mandamus ought to issue.

Opinion of the Court: "The difficulty, or impossibility, rather, of complying now with the Act of Parliament on account of the lapse of time was not very strongly pressed. For though the election is fixed to take place in May, yet the well-known practice of this Court is to set aside vicious proceedings held at the regular period, and direct others in their place afterward. It would be too great a triumph for injustice if we should enable it to postpone forever the performance of a plain duty only because it had done wrong at the right season" (pp. 24, 25).

Mayor of Rochester *vs.* The Queen, 1 Ellis, Blackburn, & Ellis, p. 1024.

Facts. — Objections were taken to certain voters, which were unlawfully overruled. After the time limited for holding the tribunal had expired, and its presiding officer, the mayor, had been succeeded by the plaintiff in error, a mandamus was awarded, to which the new mayor returned that he was not the mayor who rejected the objections, but was willing to obey

the writ if he could lawfully hold the court. On demurrer to this return, the Queen's Bench sustained the demurrer, and issued a peremptory mandamus.

Held: No error.

Opinion of the Court (MARTIN, B.): "We are of opinion that the Court of Queen's Bench was right, and ought to be affirmed. It seems to us that Rex *vs.* Sparrow (2 Strange, 1123) and Rex *vs.* Mayor of Norwich (1 B. & Adolphus, p. 310) are authorities upon the point, and that the principle of those cases establishes the doctrine that the Court of Queen's Bench ought to compel the performance of a public duty by public officers, although the time prescribed by statute for the performance of them has passed; and if the public officer to whom belongs the performance of that duty has in the mean time been succeeded by another, we think it is the duty of the successor to obey the writ and to do the acts (when required) which his predecessor has omitted to perform; and we think all statutes are to be read with reference to this known, acknowledged, recognized, and established power of the Court of Queen's Bench to superintend and control inferior jurisdictions and authorities of every kind. So reading this statute, we think it sustains the judgment of the Court of Queen's Bench as much as if express words were found in it directing what that Court has ordered" (pp. 1031–1032).

(Cited and followed, Queen *vs.* Monmouth, Law Reports, 5 Q. B., p. 251.)

Ex parte Heath, 3 Hill R., p. 42.

Facts. — Ward inspectors of New York city were required by statute to certify the result of the ward election "on the day subsequent to the closing of the polls, or sooner." A ward election was held on the 12th of April; the result was not certified until the 14th.

Held: The return was valid notwithstanding; and a mandamus should go, commanding the mayor to administer the oath to the persons returned as elected.

Opinion of the Court: "The idea which we understood to be thrown out in argument, that the return from the Sixth Ward was void because not completed till the 14th of April instead of the 13th, is altogether inadmissible. Nothing is better settled,

as a general rule, than that where a statute requires an act to be done by an officer within a certain time for a public purpose, the statute shall be taken to be merely directory; and though he neglect his duty by allowing the precise time to go by, if he afterward perform, the public shall not suffer by the delay" (pp. 46, 47).

This case was affirmed in the Court of Errors by the unanimous vote of thirty-four members out of the thirty-five constituting the court, one alone being absent[1] (3 Hill, p. 53, note).

Statute of authentication and confirmation.

The Statute "declaring and establishing the appointment of electors," if considered merely as a testimony of what the State of Florida has actually done in respect to the appointment of electors, is an evidence of a higher nature, of greater authority, and of more cogency than a certified list by the governor.

A statute enacted with the concurrence of the two Houses of the Legislature and approved by the governor is in itself a more important and weighty thing than a certificate made by the governor in a merely ministerial capacity, and at best but *quasi* official. It has attributes and incidents of a public law, and is in its nature, in the absence of any legal standard of appreciation, entitled to more consideration and credit.

The law-making power, except as limited by written constitutions, is the highest of governmental powers, it is the government itself; and, subject to such limitations, may modify the powers of the governor and direct him in their exercise. And in respect to the appointment of electors by the State, the legislature of the State is vested by the Constitution of the United States with special and exceptional powers. It may direct the mode in which electors shall be appointed, provided they be in reality appointed by the State through some of its proper organs. It may appoint those electors itself; and even after it has devolved that function on a popular vote, may resume the power. It creates all the machinery by which the appointment of electors by popular election is made, its powers in this respect being limited by the condition that the election shall be a

[1] See Note A, *post*, p. 475.

reality and not a fiction; and it prescribes the whole system of authentication and proof of the persons who are chosen, except only the governor's lists. Curative powers to remedy a failure in the appointment of electors have been specially added to the general authority of the legislature, or recognized as a part of that authority, by the Acts of Congress of 1792, 1804, and 1845. These remedial means have been applied to two classes of cases, — the one of vacancies in the electoral colleges arising from every variety of cause subsequent to the original appointment, and the other vacancies occasioned by failure to elect. It is not doubted that the legislature might fill such vacancies by its own direct appointment.

The legislature, representing the State, stands in some sort as a principal to rectify the errors and wrongs of the subordinate agents by which the State might lose its votes, or what is worse, be misrepresented in the votes given in its behalf. If in its extensive and various acknowledged powers over the whole subject no capacity could be found to prepare and submit fresh proofs of what the State has really done to authenticate the acts of the State, to correct defects of form, and give effect to the will of the State, it would be a solecism in governmental polity. Such remedies appeal with great force to the tribunal which is to count the votes, and are entitled to a benign construction. This statute of Florida contains words of authentication, words of confirmation and ratification, and words of appointment.

If the commission shall find, what it is not believed it will find, that there was a failure to make a choice of electors in Florida on the 7th day of last November, or an impossibility of ascertaining what that choice was, then these words of appointment in the new law of Florida must be taken as a new appointment under Section 134 of the Revised Statutes of the United States, which does not limit the time within which such appointment can be made, while authorizing it to be made "on a subsequent day." It would follow that the electors appointed could meet and vote, if they had not already done

so, even though it were on a later day than the first Wednesday in December, the statute of 1845 thus making an exception to the statute of 1792. But that question is not involved. The power of new appointment is a larger power than that of perfecting and validating official acts which the legislature had the right to authorize, and did authorize, but which have been imperfectly performed.

Canvass of the electoral votes.

The first canvass of the votes cast at the election of Nov. 7, 1876, in the State of Florida for Presidential electors as well as for representatives in Congress, governor, and other State officers, became the subject of discussion before the Supreme Court in the mandamus case brought on the relation of Drew, a candidate for governor, against McLin and others forming the Board of State Canvassers. Although Drew alone was relator, and the claimants for the other officers were not parties, the questions involved and the principles declared applied equally to other State officers and to the Presidential electors. The Board of State Canvassers, in obedience to the judgment of the Court in this case, made a new canvass of the votes for governor; Mr. Drew was declared elected, and entered upon, and ever since has been and is now in his office without opposition. The new canvass was applied to the lieutenant-governor, though he was not a relator, and he was declared elected, and was installed.

The votes for Presidential electors were likewise canvassed anew by the same Board of State Canvassers. In making such canvass, the directions of the Supreme Court were obeyed by them in respect to the returns from all the counties which had been the subject of special correction in the opinion pronounced by the Court; but they changed the effect of these corrections and neutralized the judgment by setting aside their own former conclusions in respect to Baker County. In respect to it, they rejected the perfect returns which they had allowed and canvassed on the former occasion, and substituted as a basis of their revision the imperfect returns which they had before rejected.

In this condition of things the old Board of State Canvassers went out of office and the new Board came in. The Legislature, deeming both the canvasses of the electoral vote, so made by the former Board, illegal, and therefore void, passed an Act to provide for a new canvass, requiring that the canvass should be conducted according to the rules prescribed by the Supreme Court. A canvass was made accordingly, and recorded and reported to the Legislature. It shows that the Tilden electors received the highest number of votes, and that they were duly chosen and appointed as such electors.

The Quo Warranto.

I. In Florida, as in most other States, the local inspectors of election form the first, or primary, returning board. They make returns to a county board or officer; and this second returning board makes a return to the final or State Canvassing Board. Neither the first nor the second of these bodies has any power or duty but that which is most purely and simply ministerial. They can merely compute from the documents before them, and in their respective returns report the result.

The State Board of Canvassers in Florida has authority which may be said slightly to exceed this. They have power to judge of the "returns" on which they act, so far as to reject them if irregular, false, or fraudulent. They have no power beyond this. They cannot investigate the qualifications of voters or as to the employment of any force, fraud, or improper influence that might justly defeat or vitiate the ballots cast. The powers and duties of all these officers are essentially ministerial.

Outside of, or beyond this, it is the judicial power alone that can investigate and determine any question of fact.

II. In Florida, as in most, if not all, the States, if a deeper investigation be necessary to justice, the judicial power must be invoked through the ancient process commonly called *quo warranto*, or through such other essentially similar judicial

process as may be created by statute or established by custom in the particular State. In Florida the *quo warranto* is used.

III. It may safely be assumed that in fact there was no fault in the voting process. Any attempt to color a pretence of this sort by affidavit or otherwise will utterly fail from its own internal weakness; it can hardly require the employment of any evidence to overthrow it. And really the only questions in the Florida case must arise upon an inquiry, — first, whether the documentary title to their alleged electoral offices set up by the persons who have cast their votes for Mr. Hayes is so strong, in the mere technical forms intrenching it, that it cannot be gainsaid; and second, if that asserted title be not thus impregnable, through the absolute force of its formality, whether an adequate impeachment of it is presented by the opposing documents.

IV. The material elements of the title set up by the Hayes electors and of the impeachment presented against it may easily be stated in a brief and intelligible form, and so as to be free from dispute about matters of detail.

1. The so-called Hayes electors were reported by the State Canvassing Board as duly elected. Mr. Stearns, the governor of Florida, gave them the three lists prescribed by the Act of Congress (Revised Statutes of the United States, section 136); and on Dec. 6, 1876, being the proper day appointed for that purpose (Revised Statutes of the United States, section 149), they cast the four votes of that State for Mr. Hayes, and in the prescribed form returned their certificates thereof to the President of the Senate. Their title to their asserted offices and their action as assumed electors, conducing to give Mr. Hayes four votes for the Presidency of the United States, would be in all respects perfect but for the fact that the report of the State Canvassing Board was unlawful and untrue. It was unlawful in this, — that such Canvassing Board, exercising high powers of a judicial nature not granted to them, rejected certain regular, formal, and true returns duly laid before them, and by this means alone were enabled to reach a result favorable to the

so-called Hayes electors. If these returns had been included in the computation made by the State canvassers, the so-called Hayes electors could not have been returned as chosen; and, on the contrary, four other persons, who may be called Tilden electors, would have been so returned. Independently of the strict technical questions,—first, whether the mere documentary title of these so-called Hayes electors can lawfully be drawn in question, and second, whether such asserted title has been effectually impeached by stronger and controlling documentary evidence, —the correctness of the preceding statement must be conceded.

2. On the 6th day of December, 1876, and prior to the time when the so-called Hayes electors assumed to cast, and, in form, did cast, the electoral votes of Florida, proceedings in due form, by *quo warranto*, were instituted against them in the proper judicial court of that State; and such proceedings having been prosecuted against them with due diligence and all practicable speed, judgment of ouster was duly entered against them on the 25th day of January, 1877.

3. The said four Tilden electors, acting without the triplicate lists prescribed by the Act of Congress (Revised Statutes of the United States, section 136), did, on Dec. 6, 1876, cast the four votes of Florida for Mr. Tilden as President; and, as well in that respect as in all others, acting in entire and perfect conformity with the Constitution of the United States, they certified the same votes to the President of the Senate.

They did everything toward the authentication of such votes required by the Constitution of the United States or by any Act of Congress except the said Section 136 of the Revised Statutes; and, in conformity with the aforesaid judgment of the Florida Court, a governor of Florida, who had been duly inducted into office subsequently to Dec. 6, 1876, did, on the 26th day of January, 1877, give to the above-mentioned Tilden electors the triplicate lists prescribed by said Act of Congress (Revised Statutes of the United States, section 136), which they have forwarded as prescribed by the Acts of Congress as a supplement to their former certification in that behalf.

V. No technical difficulties exist which can prevent the proper authorities of the Union from seeing the invalidity of title set up by the Hayes electors.

1. It is a fundamental rule that all intruders into official positions may be ousted by regular judicial action at law in the nature of *quo warranto*.

2. Judgment against the defendants in a *quo warranto* determines conclusively that such defendants were without title, and were usurpers holding by unlawful intrusion, as far back, at least, as the commencement of the proceedings against them.[1]

3. Acts performed by officers *de facto*, holding under color of a regular appointment, are held to be valid so far as may be necessary for the public good and to protect rights and interests acquired in good faith under the formal action of such officers; but this conservative principle, adopted from the necessity of the case, can have no application to the unlawful casting of electoral votes for Mr. Hayes now in question.

(*a*) Balloting and certifying the votes are preliminary steps only in a process which has no perfection or efficacy until the certificates reach the proper authority at the seat of government, and are there opened and published in the presence of the two Houses.

Until this is done, no act of the pretended electors is consummated or perfected; and if, before this act is done, the State of Florida, through its appropriate judicial power, ascertains and condemns the usurpation and ousts the usurpers, the conservative principle in question will not apply. It has never been held that partial and incomplete action during their usurpation by wrongful intruders into an office shall be carried onward to perfection after their ouster by *quo warranto*.

(*b*) The judgment of the Circuit Court is not impaired or lessened in efficacy by the proceeding to review it in a higher court. At common law the judgment of a court of original jurisdiction takes full effect immediately upon its entry, and

[1] Note B, *post*, p. 477.

until reversed it is as effectual as if pronounced by a court of last resort.[1]

VI. Taking into view the action of the Tilden electors, a case of competition is presented, and their votes should be counted instead of those cast for Mr. Hayes.

1. The Constitution deals expressly with the subject of authenticating the votes (Article XII.); and it declares expressly what powers of legislation Congress "may" exercise with respect to action within the respective States in the choosing of electors and the casting of electoral votes (Article II. section 4). *Expressio unius exclusio est alterius* is a maxim; and it is very doubtful at best whether any other compulsory power over the States in these matters can be exercised by Congress.

2. Section 136 of the Revised Statutes was a very suitable precautionary enactment, and it ought to be obeyed; but under the view last stated it is justly subject to many observations.

(*a*) Its framers seem to have understood that it was only directory or as a recommendation, and operative only through the presumable respect of the State authorities for the wishes of Congress. Certainly there is no power in the United States Government to compel a governor's obedience. A mandamus could not be employed in the case by any judicial court.

(*b*) The section does not declare that the lists referred to shall be conclusive evidence, or the only evidence, or *the* evidence, or any evidence as to the appointment of the electors; nor does it define, affirmatively, negatively, or in any way, what shall be the effect of their presence or their absence.

3. The Tilden electors on the day prescribed by the Act of Congress did everything required by the Constitution itself or by any Act which Congress had authority compulsorily to prescribe to the State or any of its officers as a duty.

VII. Neither the omission of the State canvassers to make proper evidence that the Tilden electors were appointed, nor the want of the lists prescribed by the Revised Statutes of the United States, section 136, can work any prejudice.

[1] Note C, *post*, p. 478.

1. The failure of an officer to perform a duty at or within a time prescribed cannot, except in very special cases or under very peculiar circumstances, utterly defeat the right which the law intended to secure by enjoining such performance.

2. Of this proof may be found in the practice of the courts on application for a mandamus to compel performance of official duties.[1] The time allowed for performance of the duty must always be shown to have elapsed before a mandamus will be granted. If the duty could never be performed after, by any accident or misadventure, the time had elapsed, the law would by an absurd technical rigor defeat its own object.

VIII. If there be any incurable defects in prior action, the subsequent legislation of Florida was warranted by the Revised Statutes of the United States, section 134. A just and liberal construction should be given to remedial acts of this nature.

[1] Note A, *post*, p. 475.

NOTE A.

1. State *vs.* Judges of Bergen County Common Pleas, 2 Pennington, N. J. Law R., p. 541 (3d ed., p. 308).

Facts. — A statute required that the trial justice should send the papers on appeal to the clerk of the appellate court "on or before the first day of the next term." The trial justice delayed filing the return until after such first day, whereupon the appellant filed the papers himself during the term. The appellate court having dismissed the appeal on the ground of this omission, —

Held: A mandamus should issue to compel the appellate court to receive the appeal.

Opinion of the Court: "The Act . . . is only directory to the justice, and not conclusive on the Court. The mandamus must, therefore, issue."

2. People *vs.* Dodge, 5 Howard's N. Y. Practice, R., p. 47.

Facts. — An inferior court was required by statute to file its decision "within twenty days after the court at which the trial took place." In a case where the court had made a decision within, but had been prevented by accident from filing it until after the statutory time,

Held: A mandamus should go to compel the filing after the day.

3. King *vs.* Carmarthen, 1 Maule & Selwyn, p. 697.

Facts. — A borough charter ordained that no persons should be a burgess except freeholders having specified estates, etc., "so as such person should make application to the mayor, etc., on Monday next after Michaelmas in each year and at no other time, and so as such person did then before the mayor so make . . . proof of his qualification; and that upon such proof such

person should be admitted at the next or any subsequent court," etc.

The prosecutors, some fifty in number, made application on the statute day, and offered proof of their qualifications; but the whole day was consumed in other business, and the mayor, etc., refused to hold an adjourned meeting for taking the proof offered, on the ground of want of power to go beyond the day fixed by the statute.

Held, that the excluding words of the charter did not prevent the issuing of a mandamus compelling the mayor, etc., to record an adjournment and hold an adjourned meeting.

Opinion of the Court. — Le Blanc, J.: "There is no doubt that a peremptory mandamus must go. The provisions of the charter are to enable persons having a previous inchoate right to perfect that right. . . . In this case it seems that from unavoidable necessity the whole day had been exhausted, not before the claims were made, but before the evidence in support of them could be heard. Common sense shows that the charter must have meant that the corporate body should have power to adjourn in order to conclude such business as they had regularly begun; otherwise it would have been in the power of any person, by contrivance, to protract the business and prevent the claims being effectual" (pp. 702–703).

Dampier, J.: "The argument on the [mayor's] side would go to show that if the corporation wrongfully refused the claims, those claims must be suspended until another year; that this case is like the case of no election, or of a colorable election, prior to the statute. But that is pushing the argument much too far. It seems to me, from the very nature of this case, to be absolutely necessary that the corporate body should have the power of adjournment, in order to give effect to the inchoate rights of the claimants and to guard against the possibility of their claims being frustrated by collusion. Therefore I am of opinion a peremptory mandamus ought to go" (p. 706).

See additional authorities cited *ante*, pp. 465–467.

NOTE B.

1. High on "*Quo Warranto:*" "Section 748. The effect of an absolute judgment of ouster is conclusive upon the person against whom the judgment is rendered, and is a complete bar to his again asserting title to the office or franchise, by virtue of an election before the original proceedings."

2. King *vs.* Clarke, 2 East, p. 75.

Facts. — After a judgment of ouster in *quo warranto* had been entered against one claiming to be an alderman duly elected and sworn, he obtained a mandamus to have himself sworn in, and was sworn. On a second *quo warranto* against him he pleaded that he had been duly elected before the first *quo warranto* and sworn afterward. On demurrer, —

Held, that the first judgment was a bar.

Opinion of the Court (Lord Kenyon, C. J.): "The question is abundantly clear of all doubt. . . . Upon an information exhibited against the defendant for usurping the office . . . there was judgment of ouster against him, whereby he was absolutely forejudged and excluded from ever using the office in future. If this were not to conclude him from insisting upon the same election again, I know not what would. Suppose, after this, an application had been made to the Court for a mandamus to compel the corporation to proceed to a new election to fill up the vacancy, what resistance could have been made to it? And yet if the prior election could be resorted to again, it could be of no avail; or there could be two persons filling one office at the same time. If the defendant could insist on the former election, he would also be entitled to a mandamus to swear him in; and thus the proceedings of the Court would become utterly inconsistent" (pp. 83, 84).

3. Queen *vs.* Blizard, Law Reports, 2 Q. B., p. 55.

Facts. — The relator and the defendant were both of them candidates at an election. The relator had a majority of the votes if the defendant was ineligible. The defendant, being in

fact ineligible, resigned the office. Afterward a rule for a *quo warranto* information was moved for, and this prior resignation was relied on by the defendant to defeat the rule.

Held, that the object of the relator being to substantiate his own claim to the office arising from the election itself, the rule should be made absolute.

Opinion of the Court (Cockburn, C. J.): "The relator not only denies the validity of the defendant's election, but claims to have been himself elected into the office. . . . In order to enable the relator to take that position it must necessarily be assumed that there never was any election of the defendant. . . . The effect of a resignation would be simply to send the parties to a new election, while the effect of a disclaimer or judgment for the Crown upon the final issue of the *quo warranto* would be to displace the defendant from the first, leaving it open — which otherwise it would not be — to the relator to claim the office" (pp. 57, 58). Mellor and Lush, JJ., concurred.

NOTE C.

1. Allen *vs.* Mayor of Savannah, 9 Georgia, p. 286.

Facts. — Pending an appeal from a judgment declaring a tax ordinance of a city to be unconstitutional and void, the Legislature passed an Act confirming all the ordinances in operation at its date. Afterward the Court of Error affirmed the original judgment.

Held, that the Confirmatory Act did not validate the ordinance in question.

Opinion of the Court: "The pendency of the writ of error did not affect the judgment. . . . It was binding until reversed, and, being affirmed, was binding *ab initio*. . . . The judgment of affirmance . . . relates back and takes effect from the date of the first judgment" (p. 294).

2. Sage *vs.* Harpending, 49 Barb., p. 174.

Facts. — After a judgment in favor of a landlord that a tenancy had expired, and while an appeal therefrom was pending,

the defeated tenant attempted to oust the landlord, and being repelled by force, sued the landlord for an assault.

Held, that the judgment was a good plea to the action.

Opinion of the Court: "The fact that an appeal had been taken to another court did not affect the conclusive nature of the judgment as a bar whilst it remained unreversed (Harris *vs.* Hammond, 18 How. Pr., p. 124)."

3. Buzzard *vs.* Moore, 16 Indiana, 107, p. 109.

Opinion of the Court: "The only effect of an appeal to a court of error when perfected, is to stay execution upon the judgment from which it is taken. In all other respects the judgment, until annulled or reversed, stands binding upon the parties as to every question directly decided (Cole *vs.* Connolly, 16 Ala., p. 271). And it has been expressly decided that 'It is no bar to an action on a judgment that the judgment has been removed by writ of error to a superior court' (Suydam *vs.* Hoyt, 1 Dutcher, N. J. R., p. 230)."

S. P. Bank of North America *vs.* Wheeler, 28 Conn., pp. 441, 442, and cases cited.

NOTE D.

In this connection the following Special Message of Governor John Hancock to the Senate and House of Representatives of Massachusetts, dated Nov. 8, 1792, calling the attention of the legislative power of that commonwealth to the mandatory character of the Federal legislation of March 1, 1792, is most suggestive: —

"*Gentlemen of the Senate and of the*
"*House of Representatives.*

"By the Constitution of the United States of America, each State is to appoint, in such manner as the legislature shall direct, electors of President and Vice-President. By a late Act of Congress it is enacted 'That the Supreme Executive of each State shall cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the first Wednesday in December.'

"I feel the importance of giving every constitutional support to the General Government; and I also am convinced that the existence and well-being of that Government depends upon preventing a confusion of the authority of it with that of the States separately. But that Government applies itself to the people of the United States in their natural, individual capacity, and cannot exert any force upon, or by any means control the officers of the State Governments as such. Therefore, when an Act of Congress uses compulsory words with regard to any act to be done by the Supreme Executive of this commonwealth, I shall not feel myself obliged to obey them, because I am not, in my official capacity, amenable to that Government.

"My duty as governor will most certainly oblige me to see that proper and efficient certificates are made of the appointment of electors of President and Vice-President; and perhaps the mode suggested in the Act above mentioned may be found to be the most proper. If you, gentlemen, have any mode to propose with respect to the conduct of this business, I shall pay every attention to it.

"Gentlemen, I do not address you at this time from a disposition to regard the proceedings of the General Government with a jealous eye, nor do I suppose that Congress could intend that clause in their Act as a compulsory provision; but I wish to prevent any measure to proceed through inattention which may be drawn into precedents hereafter to the injury of the people, or to give a constructive power where the Federal Constitution has not expressly given it."[1]

NOTE E.

Curative Acts.

1. Thomson *vs.* Lee County, 3 Wallace, p. 327.

A statute submitted the question of bonding a town to a vote of the municipality. After bonds had been issued, defects in the voting were alleged, and the Legislature passed a Curative Act legalizing the issue.

[1] Columbian Centinel, Nov. 10, 1792. The language of the statute of 1792 is, — "The Executive authority of each State shall cause three lists," etc.; that of the Revised Statutes, Section 136, is, — "It shall be the duty of the Executive of each State to cause three lists," etc.

Held, that the Act was valid.

Opinion of the Court: "If the Legislature could authorize this ratification, the bonds are valid, notwithstanding the submission of the question to the vote of the people or the manner of taking the vote may have been informal and irregular. This Act of Confirmation, very soon after its passage, underwent an examination in the courts of Iowa, and it was held that the Legislature possessed the power to pass it, and that the bonds were valid and binding (6 Iowa, p. 391). . . . If the Legislature possessed the power to authorize the Act to be done, it could, by a Retrospective Act, cure the evils which existed, because the power thus conferred had been irregularly executed" (p. 331).

2. St. Joseph *vs.* Rogers, 16 Wallace, p. 644.

Opinion of the Court: "Argument to show that defective subscriptions of the kind may in all cases be ratified when the Legislature could have originally conferred the power is certainly unnecessary, as the question is authoritatively settled by the decisions of the Supreme Court of the State [of Illinois] and of this Court in repeated instances (15 Ill., p. 203; 34 ib., p. 405; 3 Wallace, p. 327; 9 ib., p. 477; 8 Peters, p. 111; 24 How., p. 295). . . .

"Mistakes and irregularities are of frequent occurrence in municipal elections, and the State legislatures have often had occasion to pass laws to obviate such difficulties. Such laws, when they do not impair any contract or injuriously affect the rights of third persons, are never regarded as objectionable, and certainly are within the competency of the legislative authority" (pp. 663, 664).

3. Cooley, "Constitutional Limitations," p. 137: —

"A retrospective statute curing defects in legal proceedings where they are in their nature irregularities only, and do not extend to matters of jurisdiction, is not void on constitutional grounds unless expressly forbidden. Of this class are the statutes to cure . . . irregularities in the votes, or other action by municipal corporations, or the like, where a statutory power has failed of due and regular execution through the carelessness of officers or other cause (1 Penn. Stat., p. 218; 17 ib., p. 524; 26 Iowa, p. 497; 49 Maine, p. 346; 69 Penn., p. 328; 4 Vroom, p. 350)."

LVIII.

At the election of 1876, when Mr. Tilden was a candidate for the Presidency, Lucius Robinson was elected to succeed him as Governor of the State of New York. The inauguration of the new Governor took place on the 1st of January, 1877. In accordance with usage, the Governor Elect entered the Assembly Chamber at twelve o'clock, leaning upon the arm of his predecessor, accompanied by most of the State officers and the Governor's staff. They took up their positions opposite each other in front of the Speaker's desk, where, as soon as silence could be obtained, Mr. Tilden addressed Governor Robinson as follows.

SPEECH AT THE INAUGURATION OF GOVERNOR ROBINSON.

Mr. Robinson, — The people of the State have given you a distinguished evidence of their confidence in choosing you for their chief magistrate by a vote so unexampled. In that testimony I cordially concur, without assuming to add to its value. It is to me a great satisfaction to surrender the chief official trust of this commonwealth to one whose valuable co-operation I have experienced, and whose career furnishes such assurance of his purpose to prosecute the work to which I have consecrated two years of official service and three previous years of my private life. To recall the government of this State to the pure condition in which a generation ago you and I knew it; to remove the fungus-growths which in evil times had overspread its administration and legislation; to lighten the intolerable burdens upon the people; to improve institutions and laws; systematically to call into the civil service, whether by appointment or election, men of higher ideals of official life, of better training and more general culture, thus utilizing a class inferior in the arts of political competition, but superior in capacities for public usefulness, — these are noble objects. They had to be pursued through stormy conflicts with selfish interests and fixed habits. Our support was an unfaltering trust in the people, if the prospect of real reform could be made visible; our inspiration was a belief that nothing worth saving could be lost if only our work did not fail.

The scrutiny of all candid men may safely be challenged as to what has been already accomplished. Wasteful and corrupt

systems destroyed, State taxation reduced one half, new remedies for official malversation enacted, the management of the public works and prisons reorganized, and commissions preliminary to other reforms instituted, — these are valuable results; but there are others even more important. The standard of official conduct has been elevated; and with it the ideas, motives, and influences which surround official life as with an atmosphere. The public suspicion of legislative venality is disappearing, and the lobbies are disbanded. The chief executive and administrative trusts of the State have been committed to gentlemen who are eminent not only for personal probity, but also for capacity and high ideals of official duty. A genuine reform in the civil service has thus been realized which could not be the product of any mere legislation without the effective co-operation of the men conducting the actual administration. I have traced these results, approved by the people at the last two elections in this State, because they encourage the aspirations of the community for a better government, and tend to inspire a noble ambition in all rising men to compete for honors and power by appealing to the best moral forces of human society. As an example, these results are infinitely important. I congratulate you, sir, that, at such a time and with such favoring auspices you enter upon an administration which, I believe, will be fruitful of public benefit and of honors to yourself.

LIX.

Mr. Tilden spent a portion of the summer of 1877 in Europe. On the evening following his return he was complimented by a serenade, given under the auspices of the Young Men's Democratic Association. The crowd gathered in and around Mr. Tilden's residence in Gramercy Park sent up enthusiastic cheers when, in reply to many loud calls from some of their number, he presented himself to their view on his balcony. After quiet and order were restored, and in one of the intervals of the music, Mr. Tilden proceeded to address them. It was in the course of his remarks on this occasion that he referred to our great national staple, Indian corn, in a way which caused this speech to be known as the "Indian Corn Speech."

THE INDIAN CORN SPEECH.

Gentlemen of the Young Men's Democratic Club, — I thank you for your kindly welcome. My summer excursion, now just closed, had for its object a season of physical activity in the open air in a moderate climate and amid scenes interesting by their associations with our literature, with our jurisprudence, and with the origin and growth of representative institutions. It has repaired, as much as three months could, the waste of six years consecrated to an effort for governmental reform in the city, State, and nation. I do not forget that in 1871 you joined in the work, and have never since been wanting to it. I am glad here to-night to mingle my congratulations with yours on what has been done, on the good auguries for the future, and above all on the resolute purpose of the young men of our country that the Republic shall be completely restored and re-established according to its original ideals.

The contrast which strikes the American eye between the British Isles and our own country in the supply of food, and especially cereals, ought to be the basis of profitable exchanges and inestimable mutual benefactions. The wants of our British cousins, already enormous, will rapidly increase. They grow, not only with population, but also by an incessant diversion of labor toward the most profitable employments. Our means of supply are boundless. We have immense areas of fertile soils, cheap, peculiarly fitted for the use of agricultural machinery, and connected with the centres of foreign commerce by great rivers, by vast inland seas, and by seventy-five thousand miles

of railway. We have a sun in our heavens which, in the season of agricultural growth, pours down daily floods of light and warmth, making the earth prolific, giving abundance and variety of fruits, assuring the wheat crop, yielding cotton in its zone, and ripening Indian corn everywhere, even to the verge of the farthest North.

I predict a great increase in the consumption of our corn by Great Britain over the sixty million bushels which it reached last year. It is the most natural and spontaneous of our cereal products. Our present crop ought to be 1,500,000,000 bushels, against 300,000,000 bushels of wheat. It is but little inferior to wheat in nutritive power. It costs less than one half on the seaboard, and much less than one half on the farm. It can be cooked, by those who consent to learn how, into many delicious forms of human food. Why should not the British workmen have cheaper food? Why should not our farmers have a great market? Why should not our carriers have the transportation? Let us remember that commercial exchanges must have some element of mutuality. Whoever obstructs the means of payment obstructs also the facilities of sale. We must relax our barbarous revenue system so as not to retard the natural processes of trade. We must no longer legislate against the wants of humanity and the beneficence of God.

The election now impending involves the choice of the State officers, who compose the administrative boards. Governor Robinson's administration has been characterized by incorruptible integrity, by wisdom and ability, and by unswerving fidelity to the reforms that have reduced the State taxes one half; that are rapidly extinguishing the State debt; that have retrenched two million five hundred thousand dollars a year of the expenditures upon public works, and have purified our great official trusts. He needs, and has a right to have, the cordial co-operation of those officers who, in the government of the United States and other systems, form the Cabinet of the Chief Executive. In my judgment the gentlemen in nomination will co-operate in the reform policy which I had the honor to in-

augurate, and which Governor Robinson is consummating. I think that their election and the changes that will take place from the constitutional amendments adopted in 1876 will give him a more united support in the Canal Board than I was able to receive during my administration. I have the more satisfaction in avowing this conviction because I believe that any nominations that did not promise such co-operation would be disowned by the Democratic masses.

The election, although for State officers, has relations to national politics to which I know you will expect me to refer. The condemnation by the people of the greatest political crime in our history, by which the result of the Presidential election of 1876 was set aside and reversed, is general and overwhelming.

[A Voice. — We know you got robbed.]

I did not get robbed. The people got robbed. I had before me on one side a course of laborious services, in which health and even life might be perilled, and on the other a period of relaxation and ease; but to the people it was a robbery of the dearest rights of American citizens. Her sister States might afford to have the voice of New York frittered away or its expression deferred. It could not change history; it could not alter the universal judgment of the civilized world; it could not avert the moral retribution that is impending. But New York herself cannot afford to have her voice unheard. The Declaration of Independence, the Bill of Rights, and the State Constitutions all contain assertions of the right of the people to govern themselves and to change their rules at will. These declarations had ceased to have any meaning to the American mind; they seemed to be truisms which there was nobody to dispute. The contests known to us were contests between different portions of our people. To comprehend the significance of these declarations it is necessary to carry ourselves back to the examples of human experience in view of which our ancestors acted. They had seen the governmental machine and a small governmental

class, sometimes with the aid of the army, able to rule arbitrarily over millions of unorganized, isolated atoms of human society. In forming the government of the United States they endeavored to take every precaution against the recurrence of such evils in this country. They kept down the standing army to a nominal amount. They intended to limit the functions of the Federal Government so as to prevent the growth to dangerous dimensions of an office-holding class and of corrupt influences. They preserved the State governments as a counterpoise to act as centres of opinion and as organized means of resistance to revolutionary usurpation by the Federal Government. Jefferson, the leader of liberal opinion, in his first Inaugural recognized this theory; Hamilton, the representative of the extreme conservative sentiment, in the "Federalist" expounded it with elaborate arguments; Madison, the father of the Constitution, enforced these conclusions. [A Voice, — "How about the returning board?"] There were no returning boards in those days. The people elected their own President, and there were no Louisiana and Florida returning boards to rob them of their rights.

The increase of power in the Federal Government during the last twenty years, the creation of a vast office-holding class with its numerous dependents, and the growth of the means of corrupt influence, have well nigh destroyed the balance of our complex system. It was my judgment in 1876 that public opinion, demanding a change of administration, needed to embrace two thirds of the people at the beginning of the canvass in order to cast a majority of votes at the election. If this tendency is not arrested, its inevitable result will be the practical destruction of our system. Let the Federal Government grasp power over the great corporations of our country and acquire the means of addressing their interests and their fears; let it take jurisdiction of riots which it is the duty of the State to suppress; let it find pretexts for increasing the army, — and soon those in possession of the government will have a power with which no opposition can successfully com-

pete. The experience of France under the Third Napoleon shows that with elective forms and universal suffrage despotism can be established and maintained.

In the canvass of 1876 the Federal Government embarked in the contest with unscrupulous activity. A member of the Cabinet was the head of a partisan committee. Agents stood at the doors of the pay-offices to exact contributions from official subordinates. The whole office-holding class were made to exhaust their power. Even the army, for the first time, to the disgust of the soldiers and many of the officers, was moved about the country as an electioneering instrument. All this was done under the eye of the beneficiary of it, who was making the air vocal with professions of civil-service reform, — to be begun after he had himself exhausted all the immoral advantages of civil-service abuses. Public opinion in some States was overborne by corrupt influences and by fraud; but so strong was the desire for reform that the Democratic candidates received 4,300,000 suffrages. This was a majority of the popular vote of about 300,000, and of 1,250,000 of the white citizens. It was a vote 700,000 larger than General Grant received in 1872, and 1,300,000 larger than he received in 1868. For all that, the rightfully elected candidates of the Democratic party were counted out, and a great fraud triumphed, which the American people have not condoned, and will never condone. Yes! the crime will never be condoned, and it never should be. I do not denounce the fraud as affecting my personal interests, but because it stabbed the very foundations of free government. Such a usurpation must never occur again; and I call upon you to unite with me in the defence of our sacred and precious inheritance. The government of the people must not be suffered to become only an empty name.

The step from an extreme degree of corrupt abuses in the elections to the subversion of the elective system itself is natural. No sooner was the election over, than the whole power of the office-holding class, led by a Cabinet minister,

was exerted to procure, and did procure, from the State canvassers of two States illegal and fraudulent certificates, which were made a pretext for a false count of the electoral votes. To enable these officers to exercise the immoral courage necessary to the parts assigned to them, and to relieve them from the timidity which God has implanted in the human bosom as a limit to criminal audacity, detachments of the army were sent to afford them shelter. The expedients by which the votes of the electors chosen by the people of these two States were rejected and the votes of the electors having the illegal and fraudulent certificates were counted, and the menace of usurpation by the President of the Senate of dictatorial power over all the questions in controversy, and the menace of the enforcement of his pretended authority by the army and navy, the terrorism of the business classes, and the kindred measures by which the false count was consummated, are known. The result is the establishment of a precedent destructive of our whole elective system. The temptation to those in possession of the government to perpetuate their own power by similar methods will always exist; and if the example shall be sanctioned by success, the succession of government in this country will come to be determined by fraud or force, — as it has been in almost every other country, — and the experience will be reproduced here which has led to the general adoption of the hereditary system in order to avoid confusion and civil war.

The magnitude of a political crime must be measured by its natural and necessary consequences. Our great Republic has been the only example in the world of a regular and orderly transfer of governmental succession by the elective system. To destroy the habit of traditionary respect for the will of the people as declared through the electoral forms, and to exhibit our institutions as a failure, is the greatest possible wrong to our own country. It is also a heavy blow to the hopes of patriots struggling to establish self-government in other countries. It is a greater crime against mankind than the usurpation of December 2, 1851, depicted by the illustrious pen of

Victor Hugo. The American people will not condone it under any pretext or for any purpose.

Young men! in the order of nature we who have guarded the sacred traditions of our free government will soon leave that work to you. Within the life of most who hear me our Republic will embrace a hundred millions of people. Whether its institutions shall be preserved in substance and in spirit as well as in barren forms, and will continue to be a blessing to the toiling millions here and a good example to mankind, — now everywhere seeking a larger share in the management of their own affairs, — will depend on you. Will you accomplish that duty, and mark these wrong-doers of 1876 with the indignation of a betrayed, wronged, and sacrificed people? I have no personal feeling; but thinking how surely that example will be followed if condoned, I can do no better than to stand among you and do battle for the maintenance of free government.

I avail myself of the occasion to thank you, and to thank all in our State and country who have accorded to me their support, — not personal to myself, but for the cause I have represented, which has embraced the largest and holiest interests of humanity.

LX.

In the fall of 1877, during a brief visit of the head of the wealthy banking-house of J. S. Morgan & Co. to this country, his friends in New York tendered him the compliment of a public dinner. Mr. Morgan had left the United States in 1854 to accept a position in the banking-house of the late George Peabody, of which he soon became the most active partner, and on Mr. Peabody's retirement the head. The prosperity of the house was extraordinary, if not unexampled, while its character was such as to exalt in the estimation of the Old World the country and the profession it represents.

The gentlemen who united in this compliment to Mr. Morgan, about a hundred in number, consisted largely of the class of citizens of New York and neighboring States who had held more or less extensive business and social relations with Mr. Morgan. The dinner was given at Delmonico's on Nov. 8, 1877, and Mr. Tilden was invited to preside. When the cloth was removed, he rose, and presented the guest of the evening to the audience in the following speech.

SPEECH AT THE DINNER GIVEN TO J. S. MORGAN.

In this festive tribute to a gentleman who has become eminent in the metropolis of Great Britain, offered by his fellow-citizens in America, I am commissioned to propose a single toast and to elicit a single speech; and I am to make some introductory suggestions calculated to awaken that native eloquence which springs spontaneously to the lips of every American.

I could not look upon this audience without being reminded that it is a teaching of political economy that every man who, by any effort, reduces the cost or increases the fruits of any service demanded by society, to that extent enlarges the productive capacity of human labor and increases the results of its exercise. These men, whom we see around us, owners and managers of colossal capital, associated together in corporate firms, undoubtedly have an illusion — at least some of them have — that they are working for themselves; but I have the satisfaction to be able to claim, on behalf of the rest of us, that they are chiefly working for the general public. I can remember when the products of agricultural industry in the interior of the United States were not worth the cost of bringing them to market. A little time before I was born, two uncles of mine went about thirty miles west of the lower Hudson and established a town there because the produce of the rich grain region less than two hundred miles west of Albany could not be profitably brought to New York by any means then known to civilization. Ere I had grown to manhood I remember reading reports made by Mr. Flagg, then

comptroller, having charge of the State canals, containing answers to circulars sent out to ask the farmers of Ohio, Indiana, and Illinois whether, by the improved methods then deemed to be marvellous creations, they could afford to send their produce to the New York markets. Twenty years later we were able to grasp the business that arises in the valley of the Mississippi, and bring vast quantities of cereal and other food products a thousand and many more miles to our city on its way to European markets.

Now, gentlemen, this question of transportation has, in the United States, a magnitude which is possible nowhere else in the world. Take a product of agricultural industry which used to cost an amount equal to its whole value on the farm to bring it to market, and if you reduce the cost of that transportation one half, the effect is precisely equivalent to what it would be if you added one fourth to the fertility of the soil without any additional cost of tillage. Nowhere on the face of the globe has this great problem of transportation had such importance, and nowhere have improvements in the processes of transportation had such results as in this country; and to-day we find ourselves able to bring farm products from the remotest interior of the continent now occupied, to the points of shipment on the Atlantic seaboard, and to sell them there at prices which command the markets of Great Britain. The gentlemen who are engaged in the management of the great machinery of transportation think, no doubt, that they are working for their corporations and for their stockholders (though the stockholders seem sometimes to have great doubt on the latter point); but I, on behalf of the public, assert that in the main they are working for that public. If they have any title to popular recognition, — if they have any right to popular consideration, — this is that title, this is that right. In the first place, while we see these men of colossal fortunes, and managers of great associated capital, seeking to all human eyes their own selfish gains, there is a wise and beneficent overruling Providence which directs events so that nearly all they do in lessening the cost of these services

results, not in enlarged profits, but in diminished charges; and thus inures to the benefit of the mass of the people. It is not possible, under competition and other natural laws, that any but a comparatively inconsiderable share of the results of their scheming, their planning, their efforts, their skill, and their sacrifices, shall go anywhere else than to the benefaction of the general public.

In the second place, even as to the comparatively small share which those who do the transportation for human society are able to reserve as profits, so long as the accumulations are invested as active capital for doing necessary and useful services in the work of transportation or otherwise, it is but creating better machinery, better processes, and more competition, — all resulting in cheaper service to the public.

In the third place, when we come to the small fraction which the owners or managers of these colossal capitals are able to apply to their personal use, or to lay up for such use, the first thing that strikes one is that they cannot carry even a carpet-bag when they go on their long journey to that bourne from whence no traveller returns. Even personal accumulations, after the owners have left them, sink into the mass which society in the aggregate owns, and undergo a fresh distribution.

I remember, when I was quite a young man, being sent for by one of the ablest men I have ever known, — a great statesman and a great thinker, — Martin Van Buren, who wanted to consult me about his will. Well, I walked with him all over his farm one afternoon, and I heard what he had to say, with the previous knowledge (not from him), that I was trustee under his will. The next morning, as I stood before his broad and large wood fire, I stated the result of my reflections. I said: "It is not well to be wiser than events; to attempt to control the far future, which no man can foresee; to trust one's grandchildren, whom one does not know, out of distrust, without special cause, of one's children, whom one does know." I came home; and, after a week, I received a letter from him

stating that he had thought much about the suggestion as to attempting to be wiser than events, and had abandoned all the complicated trusts by which he had proposed tying up his property; and he submitted to me a simple form according to the laws of the land and the laws of nature, which was approved and adopted.

I went down to Roehampton last summer to see the beautiful country home of my friend Mr. Morgan, a few miles out of London. He was well pleased to show me about everywhere. No man could help being delighted with what I saw, and he was curious to know what were my impressions. Well, I had, while inspecting with pleasure the appliances of comfort and luxury, been thinking how much, after all, he got for himself out of his great wealth and great business; I had been thinking how much he was able to apply to his own use, what sort of wages he got for managing the great establishment at No. 22 Old Broad Street in London, and said to him: "I don't see but what you are a trustee here; you get only your food, your clothing, your shelter." Of course a man may have some delight in a sense of power, in a sense of consequence; but I rather thought his coachman beat him in that particular. And, on the whole, I thought aloud — I could not help it — I told him he was a trustee with a very handsome salary, doing very well; but I could not see that he got much more than any of the rest of the people about the place. Well, I did hear, when, soon after, I went down to 22 Old Broad Street, that he was rather late to business the next morning; but I will do him the justice to say that he adapted himself to the duties of a trustee, and that he was as diligent and faithful as though he had some personal interest in the great affairs he is managing. Now as to my friend Mr. Morgan — he was a Connecticut boy; he was a Boston young man. I can imagine that, when he was casting his future, he heard a spectral voice say: "Young man, go West." The West opened great opportunities. A man could go there, start with the country, grow up with it, develop with everything around him, and be a very

great character. It was easier to be an important man there than in any older country. But, on the other hand, Mr. Morgan may have heard about the same time the chiming voices of those old Bow Bells which Sir Richard Whittington heard inviting him back to London, telling him he would be Lord Mayor three times. Mr. Morgan chose London; he went to that place, in which it is more difficult to rise, more difficult to get an initiative, more difficult to start a career, than in any place else in the world; and he succeeded. And now, after many years, after a quarter of a century, he returns to his native country for a time, having manifested ability, judgment, integrity, and honor in the capital of England. But during all that time, when he has risen to great eminence and great distinction, he has the large claim on our consideration that he has never ceased to be an American. I trust also that he, as all the rest of these men of colossal fortunes, has discovered that there is something better than money, and that is the merited esteem of their fellows; and that there is something better than the merited esteem of their fellows, which is a consciousness that human society is better because we have existed.

Gentlemen, I propose to you the health of Junius S. Morgan.

LXI.

Mr. Tilden was invited to dine with the Democratic Association of Massachusetts on the anniversary of Washington's birthday, Feb. 22, 1880. General Grant was still a candidate for a third nomination to the Presidency. His partisans were active and determined. The Republicans of New York were counted upon to give him a solid delegation. It was natural that Mr. Tilden's views of third-term candidates for the Presidency should find some expression in his reply to this invitation from a State which had always given its entire electoral vote for Republican candidates. The following letter was addressed to Mr. Henry Walker, chairman of the Executive Committee of the Democratic Association of Massachusetts, Boston.

REPUBLIC, OR EMPIRE?

New York, Feb. 21, 1880.

My Dear Sir, — My engagements here will deny me the pleasure of being present at the dinner of the Democratic Association of Massachusetts on the anniversary of the birth of Washington. I need not say how much I should be delighted to meet the company who will be assembled on that occasion.

Nothing could be more fit at the present time than to commemorate that day. It was the Father of his Country, "first in war, first in peace, and first in the hearts of his countrymen," who set the original example against a third term in the Presidential office. He made that memorable precedent as a guide to all his successors and as an unwritten law of the American people. He did so in the light of a prevalent fear in the minds of the most ardent of the patriots who had achieved our national independence and created our system of free government, that indefinite re-eligibility would degenerate into a practical life-tenure.

The vast power acquired by the Federal Government over the elections by its office-holders, its patronage, the money it levies, and its various forms of corrupt influence, have developed this danger until it darkens the whole future of our country.

In the choice between the republic and the empire, we must believe that the people will be true to their ancestry and to mankind.

Tendering you assurances of my esteem, I am, respectfully yours,

Samuel J. Tilden.

Henry Walker, Esq.

LXII.

When the Convention met at Cincinnati in June, 1880, to nominate a candidate for the support of the Democratic party at the then approaching Presidential election, the delegation from New York, and probably a majority of the Convention, were in favor of the re-nomination of Mr. Tilden. For the reasons set forth in the following letter, addressed to the New York delegation at Cincinnati, Mr. Tilden declined to allow his name to go before the Convention as a candidate. The impressive eloquence of this letter so aggravated the disappointment of his friends, who had not renounced the hope that he might yield to the pressure of public opinion, that but for a peremptory despatch from Mr. Tilden to Mr. Manning, the chairman of the New York delegation, it is probable that he would have been re-nominated in defiance of his letter. The despatch was in reply to one from Mr. Manning, wishing to know if he might yield to the pressure upon him for Mr. Tilden's re-nomination, and ran as follows:—

June 28, 1880.

Hon. Daniel Manning, Grand Hotel, Cincinnati, Ohio.

Received your telegram and many others containing like information. My action was well considered, and is irrevocable. No friend must be allowed to cast a doubt upon my sincerity.

Samuel J. Tilden.

With the letter which follows, to the New York delegation in 1880, Mr. Tilden practically took leave of public life, — so far, at least, as was possible for a man of his eminence and abilities, and in the full possession of all his intellectual faculties and resources.

LETTER DECLINING A RE-NOMINATION.

New York, June 18, 1880.

To the Delegates from the State of New York to the Democratic National Convention.

Your first assembling is an occasion on which it is proper for me to state to you my relations to the nomination for the Presidency which you and your associates are commissioned to make in behalf of the Democratic party of the United States.

Having passed my early years in an atmosphere filled with traditions of the war which secured our national independence and of the struggles which made our Constitutional system a government for the people, by the people, I learned to idealize the institutions of my country, and was educated to believe it the duty of a citizen of the Republic to take his fair allotment of care and trouble in public affairs. I fulfilled that duty to the best of my ability for forty years as a private citizen. Although during all my life giving at least as much thought and effort to public affairs as to all other objects, I have never accepted official service except for a brief period for a special purpose, and only when the occasion seemed to require of me that sacrifice of private preferences to public interests. My life has been substantially that of a private citizen.

It was, I presume, the success of efforts in which, as a private citizen, I had shared, to overthrow a corrupt combination then holding dominion in our metropolis and to purify the judiciary which had become its tool, that induced the Democracy of the State in 1874 to nominate me for governor. This was done in spite of the protests of a minority that the part I had

borne in those reforms had created antagonisms fatal to me as a candidate. I felt constrained to accept the nomination as the most certain means of putting the power of the gubernatorial office on the side of reform, and of removing the impression, wherever it prevailed, that the faithful discharge of one's duty as a citizen is fatal to his usefulness as a public servant.

The breaking up of the Canal Ring, the better management of our public works, the large reduction of taxes, and other reforms accomplished during my administration, doubtless occasioned, in 1876, my nomination for the Presidency by the Democracy of the Union, in the hope that similar processes would be applied to the Federal Government. From the responsibilities of such an undertaking, appalling as it seemed to me, I did not feel at liberty to shrink.

In the canvass which ensued, the Democratic party represented reform in the administration of the Federal Government and a restoration of our complex political system to the pure ideals of its founders. Upon these issues the people of the United States, by a majority of more than a quarter of a million, chose a majority of the electors to cast their votes for the Democratic candidates for President and Vice-President. It is my right and privilege here to say that I was nominated and elected to the Presidency absolutely free from any engagement in respect to the exercise of its powers or the disposal of its patronage. Through the whole period of my relation to the Presidency I did everything in my power to elevate and nothing to lower moral standards in the competition of parties.

By what nefarious means the basis of a false count was laid in several of the States, I need not recite. These are now matters of history, about which whatever diversity of opinion may have existed in either of the great parties of the country at the time of their consummation has since practically disappeared.

I refused to ransom from the returning boards of Southern States the documentary evidence by the suppression of which,

and by the substitution of fraudulent and forged papers, a pretext was made for the perpetration of a false count.

The constitutional duty of the two Houses of Congress to count the electoral votes as cast, and give effect to the will of the people as expressed by their suffrages, was never fulfilled. An Electoral Commission, for the existence of which I have no responsibility, was formed, and to it the two Houses of Congress abdicated their duty to make the count, by a law enacting that the count of the Commission should stand as lawful unless overruled by the concurrent action of the two Houses. Its false count was not overruled, owing to the complicity of a Republican Senate with the Republican majority of the Commission.

Controlled by its Republican majority of eight to seven, the Electoral Commission counted out the men elected by the people, and counted in the men not elected by the people. That subversion of the election created a new issue for the decision of the people of the United States, transcending in importance all questions of administration; it involved the vital principle of self-government through elections by the people.

The immense growth of the means of corrupt influence over the ballot-box, which is at the disposal of the party having possession of the executive administration, had already become a present evil and a great danger, tending to make elections irresponsive to public opinion, hampering the power of the people to change their rulers, and enabling the men holding the machinery of government to continue and perpetuate their power. It was my opinion in 1876 that the opposition attempting to change the administration needed to include at least two thirds of the voters at the opening of the canvass in order to retain a majority at the election.

If after such obstacles had been overcome, and a majority of the people had voted to change the administration of their government, the men in office could still procure a false count founded upon frauds, perjuries, and forgeries furnishing a pretext of documentary evidence on which to base that false count,

— and if such a transaction were not only successful, but, after allotment of its benefits were made to its contrivers, abetters, and apologists by the chief beneficiary of the transaction, it were also condoned by the people, — a practical destruction of elections by the people would have been accomplished.

The failure to instal the candidates chosen by the people — a contingency consequent upon no act or omission of mine, and beyond my control — has left me for the last three years and until now, when the Democratic party by its delegates in National Convention assembled shall choose a new leader, the involuntary but necessary representative of this momentous issue.

As such, denied the immunities of private life, without the powers conferred by public station, subject to unceasing falsehoods and calumnies from the partisans of an Administration laboring in vain to justify its existence, I have nevertheless steadfastly endeavored to preserve to the Democratic party of the United States the supreme issue before the people for their decision next November, whether this shall be a government by the sovereign people through elections, or a government by discarded servants holding over by force and fraud; and I have withheld no sacrifice and neglected no opportunity to uphold, organize, and consolidate against the enemies of representative institutions the great party which alone, under God, can effectually resist their overthrow.

Having now borne faithfully my full share of labor and care in the public service, and wearing the marks of its burdens, I desire nothing so much as an honorable discharge. I wish to lay down the honors and toils of even *quasi* party leadership, and to seek the repose of private life.

In renouncing re-nomination for the Presidency, I do so with no doubt in my mind as to the vote of the State of New York or of the United States, but because I believe that it is a renunciation of re-election to the Presidency.

To those who think my re-nomination and re-election indispensable to an effectual vindication of the right of the people

to elect their rulers, violated in my person, I have accorded as long a reserve of my decision as possible; but I cannot overcome my repugnance to enter into a new engagement which involves four years of ceaseless toil.

The dignity of the Presidential office is above a merely personal ambition, but it creates in me no illusion. Its value is as a great power for good to the country. I said four years ago, in accepting nomination: "Knowing as I do, therefore, from fresh experience how great the difference is between gliding through an official routine and working out a reform of systems and policies, it is impossible for me to contemplate what needs to be done in the Federal administration without an anxious sense of the difficulties of the undertaking. If summoned by the suffrages of my countrymen to attempt this work, I shall endeavor with God's help to be the efficient instrument of their will."

Such a work of renovation after many years of misrule, such a reform of systems and policies, to which I would cheerfully have sacrificed all that remained to me of health and life, is now, I fear, beyond my strength.

With unfeigned thanks for the honors bestowed upon me, with a heart swelling with emotions of gratitude to the Democratic masses for the support which they have given to the cause I represented, and for their steadfast confidence in every emergency, I remain

Your fellow-citizen,

SAMUEL J. TILDEN.

LXIII.

The centennial anniversary of the capture of Major André, the British spy, was celebrated at Tarrytown on the 23d of September, 1880. With a notable military and naval display, at ten o'clock in the morning, the very hour when, a hundred years before, André had been captured, a monument reared to the memory of his captors on the very spot where the capture was made, was unveiled. At one o'clock in the afternoon a great tent, with the capacity of holding five thousand people, which had been erected on Mount André, was filled to overflowing. The platform was occupied by a large number of the prominent citizens of Westchester County, among whom, and by far the most conspicuous, were the five surviving children of John Paulding, one of the captors of André, all bowed down by age and infirmities.

Soon after the procession, formed below, had reached the grounds, Mr. Tilden entered the tent and mounted the platform, followed by Chauncey M. Depew, the orator of the day. Mr. D. Ogden Bradley, president of the Monument Association, announced that Mr. Tilden had consented to preside on the occasion, and thereupon introduced him to the audience. On taking the chair, Mr. Tilden made the remarks which follow.

THE ANDRÉ CENTENNIAL.

REMARKS ON TAKING THE CHAIR AT THE CENTENNIAL CELEBRATION OF THE CAPTURE OF ANDRÉ, AT TARRYTOWN, NEW YORK, SEPT. 23, 1880.

Fellow-Citizens, — The event which you have to-day met to commemorate marked a crisis in the fortunes both of our State and country. The valley of the Hudson, spread out here at your feet, is now chiefly known by its picturesque scenery and by the very important part it bears in our internal commerce. But its possession for military purposes was a supreme object in all the foreign wars in which New York has been involved, whether as a dependent colony of Great Britain or as a sovereign State of our American Union.

As early as 1756, in the conflict for colonial supremacy between Great Britain and France, New York was invaded by the French from Canada. In the war of 1812, between Great Britain and the United States, New York was invaded by a British armament from Canada. In the war of 1776 for American independence, the military and naval forces of Great Britain held the city of New York and the lower Hudson, and a British army from Canada penetrated nearly to Albany. It was their purpose to occupy the whole valley of the Hudson, and thereby dissever the forces and territory of the American people. Upon the defeat and capture of Burgoyne's army at Saratoga the enemy sought to secure the same end by obtaining possession of our stronghold at West Point, through the treachery of the general in command. Just

a hundred years ago, and upon the spot where you have to-day unveiled an appropriate monument, this treasonable plot was discovered and defeated by the capture of one of its emissaries, an adjutant-general of the British army. That patriotic service was rendered by three yeomen of Westchester County. It is fitting that on the centennial anniversary of an event of such critical importance in our national history the homage of a nation's esteem and gratitude should be paid to their memory.

Paulding, Van Wart, and Williams are here in the persons of their descendants or representatives.

The honors which you bestow to-day will be through future ages and to all who come after us at once a durable example and an ennobling incentive.

LXIV.

The executive committee of the International Cotton Exposition held at Atlanta, Georgia, in the winter of 1881 appointed Robert Tannahill, John H. Inman, and M. B. Fielding a special committee to wait upon Mr. Tilden and invite him to visit the International Cotton Exposition, to be held in that city, as the guest of the executive committee at such time as might be most convenient to him. The gentlemen charged with this duty waited upon Mr. Tilden, and enforced the invitation which they conveyed, with such considerations as they thought most likely to have weight with him. After a few days they received from Mr. Tilden the letter which follows.

THE INTERNATIONAL COTTON EXPOSITION.

GRAYSTONE, Dec. 17, 1881.

To the Executive Committee of the International Cotton Exposition, at Atlanta.

GENTLEMEN, — I have had the honor to receive your resolutions inviting me to visit the International Cotton Exposition as your guest, and designating Messrs. Robert Tannahill, John H. Inman, and M. B. Fielding as a special committee to communicate them to me. I have also had the honor of a personal presentation of a copy of the resolutions at the hands of those gentlemen, accompanied by Governor Colquitt, the president of the Exposition, and General Gordon.

It is with much regret that I feel obliged to deny myself the great pleasure tendered me with such distinguished courtesy. It would delight me to interchange friendly greetings with the citizens whom I should expect to meet at Atlanta, and to avail myself of so favorable an opportunity for observing with my own eyes the elements of industrial growth which promise a future of marvellous prosperity to the Southern States. Above all, I desire to contribute my influence, however inconsiderable it may be, toward encouraging a movement to organize investigation and intelligence concerning subjects of vast interest, not to the South alone, but to our whole country and the world.

I may venture to hope that the public spirit which created and has sustained this exposition is not exhausted, but that the signal success of this first essay will induce similar efforts,

attract increasing public attention to them, and secure for them wider co-operation and more perfect development.

The last time I visited those islands which were the homes of most of our ancestors, I realized what a benefaction it was that had set in these heavens a sun which is generally radiant, and sometimes blazing. It is what climatologists call the upward curve in the hourly and daily tides of heat which makes our four hundred and fifty million bushels of wheat a sure crop; which ripens our seventeen hundred and fifty million bushels of corn; and which enables us to grow six million bales of the best and cheapest cotton.

The invention which separates by machinery the fibre of the cotton from the seed gave a new comfort to every fireside. Better clothing at less cost was a boon to mankind. The fact that one half of the present cotton crop is the product of white labor has dispelled the illusion that the Caucasian race had been excluded by Providence from their natural share in so important a culture, and assures in the future an ample supply of labor from sources of indefinite extent. This result derives momentous importance from the fact that the actual culture of cotton is now applied to less than one thirtieth part of the lands embraced in the cotton belt.

The development of your agricultural industries will soon be followed by manufactures. A mature community, while it is enlarging the positive volume of its external commerce, increases the proportion of domestic manufactures which enter into the local consumption.

The advantages of a superior adaptation of climate, soil, and other spontaneous bounties of Nature, and of a geographical contiguity to the market, are a legitimate protection to the local industries, founded on the greatest productiveness of human labor in supplying the wants of man, and upon the utmost saving in the cost of transportation between the producer and the consumer.

It contrasts with the artificial devices of legislation, always unskilful, and often perverted by selfish greed, which gener-

ally have the effect of diminishing the productive power of human labor, just as if the soil were rendered less fertile or the climate less genial by act of Congress, in order to enable the deluded beneficiary to make some profit out of enterprises otherwise unremunerative.

The South is rich in natural capacities of production, as yet mainly unappropriated. To utilize these capacities is a beneficent process. Its results may come, not so fast or so soon as some may hope; but I predict that when they do come, they will in their magnitude transcend the anticipations of the most sanguine.

Your fellow-citizen,

SAMUEL J. TILDEN.

LXV.

JACKSON AND DEMOCRACY.[1]

GRAYSTONE, March 11, 1882.

GENTLEMEN, — I have received your letter conveying to me an invitation to attend a banquet of the Iroquois Club in Chicago on the 15th instant, the anniversary of the birth of Andrew Jackson, and to respond to the toast "Democracy."

It will not be practicable for me to be present with you on that occasion, but I cordially sympathize in the homage which you propose to pay to the memory of that great soldier-statesman.

He represented the exultant nationality of sentiment which had always characterized the Democracy, and he manifested in a great public crisis his own invincible determination to maintain the territorial integrity of our country and the indissoluble union of the States. He likewise represented the beneficent Jeffersonian philosophy which prefers that nothing shall be done by the General Government which the local authorities are competent to do, and nothing by any governmental power which individuals can do for themselves. The great contests during his administration arose out of his efforts to resist the usurpation by Congress of powers in derogation of the rights of localities and of individuals, as well as in derogation of the Constitution.

I well remember that in the debate in 1832 on the veto of the Bill to re-charter the Bank of the United States, Mr.

[1] Letter read at the banquet given by the Iroquois Club of Chicago on the anniversary of the birthday of Andrew Jackson, March 15, 1882, in response to an invitation to attend and reply to the toast "Democracy."

Webster, with all his eloquence, denounced and deplored the spectacle of the Executive disclaiming the powers and dismantling the government of which he was the head. The overgrowth of abuses and arrogations of authority which now conceal, as they have distorted, our political system, would have seemed fifty years ago, when that debate occurred, as incredible to Webster as they would to Jackson.

The government can never be restored and reformed except from inside, and by the active, intelligent agency of the Executive. We must hope that Providence will, in its own good time, raise up a man adapted and qualified for the wise execution of this great work, and that the people will put him in possession of the executive administration, through which alone that noble mission can be accomplished, and the health and life of our political system be preserved and invigorated.

Your fellow-citizen,

SAMUEL J. TILDEN.

MESSRS. S. CORNING JUDD, THOMAS HOYNE, MELVILLE W. FULLER, GEORGE W. BRANDT, HENRY WALLER, JR., JULIUS S. GRINNELL, and STEPHEN S. GREGORY, *Committee.*

LXVI.

JEFFERSON AND DEMOCRACY.[1]

Graystone, March 30, 1882.

Gentlemen, — I have received your letter in behalf of the Jefferson Club of New Haven, inviting me to be present at their commemoration of the birth of Thomas Jefferson. Although I am obliged to deny myself the pleasure of meeting with you on that occasion, I share the feelings which bring you together.

Mr. Jefferson has many titles to the reverence of the American people and of all lovers of liberty throughout the world. He was among the earliest, most resolute, and most steadfast of the patriots who upheld the popular rights in the incipient struggles of our Revolution, when the part he took required a higher order of courage, of self-denial, and of genius than were necessary at any subsequent period of our history. He penned the immortal statement of the principles which led our ancestors to assert the independent existence of our country, and which has been substantially adopted as a model for every people who have since attempted to establish national independence on the basis of human rights. He was first in his day completely to emancipate his own mind from the monarchical and aristocratical traditions which still enslaved most of the best intellects of the country.

But the obligations of the world to Mr. Jefferson do not end

[1] Letter read to the Jefferson Club of New Haven on the anniversary of the birthday of Thomas Jefferson.

here. On the completion of the Federal Constitution, Gouverneur Morris, being asked what he thought of it, answered, "That depends upon how it is construed." After the organization of the Federal Government a powerful class sought to impress upon it in its practical working the features of the British system. Mr. Jefferson was the great leader of the party formed to resist these efforts, and to hold our institutions to the popular character which was understood to belong to them when the Constitution was ratified by the people.

By his inflexible adherence to free principles, by his untiring efforts, by his counsels, and by the magic of his pen, he was the principal agent in rescuing from its greatest peril, and while yet in its infancy, government by the people, for the people.

The arduous contest resulted in a political revolution which brought Mr. Jefferson into the Presidency. He put the ship of State, to use his own expression, upon the "republican tack." He arrested centralizing tendencies, re-invigorated local self-government, restored the rights of the States, and protected and enlarged the domain of the individual judgment and conscience. For eight years he admininistered the Government, and for sixteen years it was administered by his pupils, under his observation and advice. Thus was established a habit which largely shaped the standards for the guidance of the popular judgment, the modes of thinking of statesmen, and the general course of government for sixty years. How important such a habit is, will be appreciated when we consider that usurpation has often been successfully accomplished in other countries by men wielding the executive power; when we remember that Jefferson sincerely feared that Hamilton, who thought our government a "frail and worthless fabric," would change it if he came into power; and when we also recall the fact that Hamilton himself has left on record his belief that Burr would have wrought a personal usurpation if he could have grasped the Presidency.

Mr. Jefferson gave to our administrative system an aspect of republican simplicity; he repressed jobbery as well as all

perversions of power; and by his precepts, his influence, and his example, elevated the standard of political morals. In his personal practice he was not only pure, but, to make his example more effective, he refrained, while administering the greatest of official trusts, from all attempts to increase his private fortune, even by methods open to every private citizen.

In a period when there seems to be little respect for the limitations of power prescribed in our written Constitution; when assumptions of ungranted authority are rife in all the departments of the Federal Government; when that Government is being gradually changed into an elective despotism, meddling in everything belonging to the State or to individuals; when every new assumption of ungranted power creates new opportunities, new facilities, and new incentives to favoritism and jobbery; when the civil service has been converted into a balance of power to determine the elections by pecuniary and other illegitimate influences; when the perversion of high trusts to the private gain of the official is frequently committed with apparent unconsciousness of wrong, and passes almost without rebuke, — it is time that the teachings and the example of Thomas Jefferson be invoked to keep alive the glimmering spark of official virtue and public honor.

Your fellow-citizen,

SAMUEL J. TILDEN.

Messrs. C. B. BOWERS, JAMES E. ENGLISH, JOHN H. LEEDS, PHILIP POND, and A. HEATON ROBERTSON, *Committee.*

LXVII.

FALSE CONSTRUCTIONS AND CORRUPT PRACTICES. — LETTER TO THE IROQUOIS CLUB.

New York, April 11, 1884.

Gentlemen, — I have had the honor to receive your invitation to the third annual banquet of the Iroquois Club to respond to the sentiment "The Federal Constitution." I have also received private letters asking a written response to the sentiment in case I am prevented from attending. I have been for some time, and am still, exceptionally engrossed with business which I have no power to defer or abandon. I must therefore communicate with you in writing, and my answer must be brief.

On the formation of the Federal Constitution, Gouverneur Morris, who had been a conspicuous member of the Convention, being asked what he thought of the Constitution, replied, "That depends upon how it is construed."[1] The Democratic party originated in a resistance by the more advanced patriots of the Revolution to the efforts which were made to change the character of our government by false constructions of the Constitution, impressing on the new system a monarchical bias. Mr. Jefferson's election in 1800 rescued our free institutions from the perils which surrounded them, and secured sixty

[1] [The remark here attributed to Gouverneur Morris was addressed by him to Rufus King. He repeated it to Mr. Van Buren, who repeated it to Mr. Tilden. — Ed.]

years of administration mainly in harmony with their design and true character.

When an attempt was made to break up the Union and to dismember the territorial integrity of the country, the people were compelled to make a manly choice between these calamities and the dangerous influence of civil war upon the character of the government. They patriotically and wisely resolved to save the Union first, and to repair the damages which our political system might sustain when the more imminent danger had been provided against.

The first work was successfully accomplished; but twenty years have since elapsed, and the work of restoring the government to its original character is not yet accomplished. Our wise ancestors had warned us that if we fell into civil discords, our free system was liable to perish in the struggle by an insensible change of its character. Not only have the best traditions of the patriots who won independence and established freedom lost their authority, but our cherished political system is slowly losing its hold upon life under the fungus-growths of false constructions and corrupt practices. Government itself has become a menacing factor in the elections. As long ago as 1876 I expressed the opinion that the opposition must embrace at the beginning of the canvass two thirds of the voters to maintain a majority at the election. In this, history repeats itself. In most countries the government maintains itself by force or fraud. Even in the comparatively popular system of England the monarch has until lately controlled a majority of Parliament, and frequently decided elections by court favors, jobs, and money taken from the public treasury. This is a hard saying; but recent publications of the papers of her deceased statesmen leave no doubt upon the subject.

In our own country the government, instead of standing as an impartial arbiter amid the conflicts of maturing opinion and contending interests, has itself descended into the arena equipped with all the weapons of partisanship. Its myriads of office-holders, its alliances with or against vast pecuniary inter-

ests, its unlimited command of money levied from its dependents and contractors, have sufficed to determine a majority in every case but one. In that case it collected military forces around the capital, and by this and other menaces intimidated the Congressional representatives of a majority of the people to relinquish the fruits of their victory and to surrender the government to the control of a minority.

No reform of the administration is possible so long as the government is directed by a party which is under the dominion of false doctrines, and animated by enormous pecuniary interests in the perpetuation of existing abuses. The first effectual step in the reform of our government must be a fundamental change in the policy of its administration. The work of reform will be difficult enough with the whole power of the government exerted in accomplishing it.

I have such faith in the benignant Providence which has presided over the destiny of our country in every great trial hitherto, that I do not despair of our ultimate deliverance. Though I can no longer aspire to be one of the leaders in this great work, I bid those upon whom this august mission may fall, God speed!

S. J. TILDEN.

Messrs. S. CORNING JUDD, Chairman,
HENRY WALLER, Jr., Secretary, } Political Committee, Iroquois Club.

LXVIII.

As the time approached for the choice of delegates to the Democratic National Convention which was to select a candidate for the Presidency in 1884, the will of the people manifested itself unmistakably in favor of the re-nomination of Mr. Tilden. Notwithstanding his letter of 1880, notwithstanding his impaired health, which exhibited no symptoms of improvement, and notwithstanding the repeated protestations of his most intimate friends that he would not listen to any proposals which contemplated his return to official life, public opinion refused to concentrate upon any other candidate. Most of the States had gone so far as to instruct their delegates to vote for his re-nomination, or to choose delegates favorable to his re-nomination; and even in his own State of New York other candidates could only get delegates favorable to them as a second choice, nor then, except upon the condition that their votes should be first given to Mr. Tilden if he would permit himself to be nominated.

The inconvenience and confusion that might result from permitting a convention to be elected under the delusive impression that he might finally yield to such a national manifestation as was certain to be made at Chicago, determined Mr. Tilden to give his friends reasonable notice that he must not be regarded as a possible candidate, and that they must look for their leader among younger and stronger men. That notice was given in the following letter, addressed to the Chairman of the Democratic State Committee of New York.

SECOND LETTER DECLINING A RE-NOMINATION TO THE PRESIDENCY.

New York, June 10, 1884.

To Daniel Manning, Chairman of the Democratic State Committee of New York.

Sir, — In my letter of June 18, 1880, addressed to the delegates from the State of New York to the Democratic National Convention, I said: —

"Having now borne faithfully my full share of labor and care in the public service, and wearing the marks of its burdens, I desire nothing so much as an honorable discharge. I wish to lay down the honors and toils of even *quasi* party leadership, and to seek the repose of private life.

"In renouncing re-nomination for the Presidency, I do so with no doubt in my mind as to the vote of the State of New York or of the United States, but because I believe that it is a renunciation of re-election to the Presidency.

"To those who think my re-nomination and re-election indispensable to an effectual vindication of the right of the people to elect their rulers, violated in my person, I have accorded as long a reserve of my decision as possible; but I cannot overcome my repugnance to enter into a new engagement which involves four years of ceaseless toil.

"The dignity of the Presidential office is above a merely personal ambition, but it creates in me no illusion. Its value is as a great power for good to the country. I said four years ago, in accepting nomination: 'Knowing as I do, therefore, from fresh

experience how great the difference is between gliding through an official routine and working out a reform of systems and policies, it is impossible for me to contemplate what needs to be done in the Federal administration without an anxious sense of the difficulties of the undertaking. If summoned by the suffrages of my countrymen to attempt this work, I shall endeavor, with God's help, to be the efficient instrument of their will.'

"Such a work of renovation, after many years of misrule, such a reform of systems and policies, to which I would cheerfully have sacrificed all that remained to me of health and life, is now, I fear, beyond my strength."

My purpose to withdraw from further public service, and the grounds of it, were at that time well known to you and to others; and when, at Cincinnati, though respecting my wishes yourself, you communicated to me an appeal from many valued friends to relinquish that purpose, I reiterated my determination unconditionally.

In the four years which have since elapsed, nothing has occurred to weaken, but everything to strengthen, the considerations which induced my withdrawal from public life. To all who have addressed me on the subject, my intention has been frankly communicated. Several of my most confidential friends, under the sanction of their own names, have publicly stated my determination to be irreversible. That I have occasion now to consider the question, is an event for which I have no responsibility. The appeal made to me by the Democratic masses, with apparent unanimity, to serve them once more, is entitled to the most deferential consideration, and would inspire a disposition to do anything desired of me, if it were consistent with my judgment of duty.

I believe that there is no instrumentality in human society so potential in its influence upon mankind for good or evil as the governmental machinery for administering justice and for making and executing laws. Not all the eleemosynary institutions of private benevolence to which philanthropists may devote their lives are so fruitful in benefits as

the rescue and preservation of this machinery from the perversions that make it the instrument of conspiracy, fraud, and crime against the most sacred rights and interests of the people.

For fifty years, as a private citizen never contemplating an official career, I have devoted at least as much thought and effort to the duty of influencing aright the action of the governmental institutions of my country as to all other objects. I have never accepted official service except for a brief period, for a special purpose, and only when the occasion seemed to require from me that sacrifice of private preferences to the public welfare.

I undertook the State administration of New York because it was supposed that in that way only could the executive power be arrayed on the side of the reforms to which, as a private citizen, I had given three years of my life.

I accepted the nomination for the Presidency in 1876 because of the general conviction that my candidacy would best present the issue of reform which the Democratic majority of the people desired to have worked out in the Federal Government as it had been in the government of the State of New York. I believed that I had strength enough then to renovate the administration of the government of the United States, and at the close of my term to hand over the great trust to a successor faithful to the same policy.

Though anxious to seek the repose of private life, I nevertheless acted upon the idea that every power is a trust and involves a duty. In reply to the address of the committee communicating my nomination, I depicted the difficulties of the undertaking, and likened my feelings in engaging in it to those of a soldier entering battle; but I did not withhold the entire consecration of my powers to the public service.

Twenty years of continuous mal-administration, under the demoralizing influences of intestine war and of bad finance, have infected the whole governmental system of the United

States with the cancerous growths of false constructions and corrupt practices. Powerful classes have acquired pecuniary interests in official abuses, and the moral standards of the people have been impaired. To redress these evils is a work of great difficulty and labor, and cannot be accomplished without the most energetic and efficient personal action on the part of the Chief Executive of the Republic.

The canvass and administration which it is desired that I should undertake would embrace a period of nearly five years. Nor can I admit any illusion as to their burdens. Three years of experience in the endeavor to reform the municipal government of the city of New York, and two years of experience in renovating the administration of the State of New York, have made me familiar with the requirements of such a work.

At the present time the considerations which induced my action in 1880 have become imperative. I ought not to assume a task which I have not the physical strength to carry through. To reform the administration of the Federal Government, to realize my own ideal, and to fulfil the just expectations of the people, would indeed warrant, as they could alone compensate, the sacrifices which the undertaking would involve. But in my condition of advancing years and declining strength I feel no assurance of my ability to accomplish those objects. I am therefore constrained to say definitively that I cannot now assume the labors of an administration or of a canvass.

Undervaluing in no wise that best gift of Heaven, — the occasion and the power sometimes bestowed upon a mere individual to communicate an impulse for good; grateful beyond all words to my fellow-countrymen who would assign such a beneficent function to me, — I am consoled by the reflection that neither the Democratic party nor the Republic for whose future that party is the best guaranty is now, or ever can be, dependent upon any one man for their successful progress in the path of a noble destiny.

Having given to their welfare whatever of health and strength I possessed or could borrow from the future, and having reached the term of my capacity for such labors as their welfare now demands, I but submit to the will of God in deeming my public career forever closed.

SAMUEL J. TILDEN.

LXIX.

The Democratic National Convention held at Chicago in the month of July, 1884, which nominated Grover Cleveland and Thomas A. Hendricks as candidates for the offices of President and Vice-President, signalized its deliberations by inserting in its platform the following tribute to Mr. Tilden : —

"With profound regret we have been apprised by the venerable statesman through whose person was struck that blow at the vital principle of republics, — acquiescence in the will of the majority, —that he cannot permit us again to place in his hands the leadership of the Democratic hosts, for the reason that the achievement of reform in the administration of the Federal Government is an undertaking now too heavy for his age and failing strength. Rejoicing that his life has been prolonged until the general judgment of our fellow-countrymen is united in the wish that that wrong were righted in his person, for the Democracy of the United States we offer to him in his withdrawal from public cares, not only our respectful sympathy and esteem, but also that best homage of freemen, — the pledge of our devotion to the principles and the cause now inseparable in the history of this Republic from the labors and the name of Samuel J. Tilden."

The Convention also unanimously adopted the following resolution : —

"*Resolved*, That this Convention has read with profound regret and intense admiration the statesmanlike and patriotic letter of Samuel J. Tilden, expressing the overpowering and providential necessity which constrains him to decline a nomination for the highest office in the gift of the American people.

"*Resolved*, That though fraud, force, and violence deprived Samuel J. Tilden and Thomas A. Hendricks of the offices conferred upon them by the Democratic party of the nation in 1876, they yet live, and ever will, first in the hearts of the Democracy of the country.

"*Resolved*, That this Convention expresses a nation's regret that

this same lofty patriotism and splendid executive and administrative ability which cleansed and purified the city and State governments of the great Empire State cannot now be turned upon the Augean stable of National fraud and corruption so long and successfully maintained by the Republican party at the National Capitol.

"*Resolved*, That copies of these resolutions be suitably engrossed, and that the Chairman of the Convention appoint a committee whose duty it shall be, in the name of the Convention, to forward or present the same to the Honorable Samuel J. Tilden and the Honorable Thomas A. Hendricks."

The Chairman of the Convention designated the following gentlemen as the committee to execute the instructions given in the last of these Resolutions.

Alabama	Hon. E. W. Pettus.
Arkansas	Hon. N. M. Rose.
California	Hon. H. M. Larue.
Colorado	Hon. J. B. Grant.
Connecticut	Hon. T. M. Waller.
Delaware	Hon. George Gray.
Florida	Hon. C. P. Cooper.
Georgia	Hon. A. O. Bacon.
Illinois	General John C. Black.
Indiana	Hon. Daniel W. Voorhees.
Iowa	Hon. L. G. Kinne.
Kansas	Hon. T. P. Fenlon.
Kentucky	Hon. J. A. McKenzie.
Louisiana	Hon. B. F. Jonas.
Maine	Hon. Payson Tucker.
Maryland	Hon. J. L. Carroll.
Massachusetts	Hon. J. G. Abbott.
Michigan	Hon. A. P. Swineford.
Minnesota	Hon. M. Doran.
Mississippi	Hon. R. H. Henry.
Missouri	Hon. John O'Day.
Nebraska	Hon. J. Sterling Morton.
Nevada	Hon. D. E. McCarthy.
New Hampshire	Hon. A. W. Sulloway.
New Jersey	Hon. Leon Abbett.
New York	Hon. L. B. Faulkner.
North Carolina	Hon. A. B. Galloway.
Ohio	General Durbin Ward.

Oregon	Hon. W. C. Cook.
Pennsylvania	Hon. William. A. Wallace.
Rhode Island	Hon. J. B. Barnaby.
South Carolina	General Wade Hampton.
Tennessee	Hon. Thomas F. House.
Texas	Hon. R. B. Hubbard.
Vermont	Hon. B. B. Smalley.
Virginia	Hon. J. S. Barbour.
West Virginia	Hon. Frank Hereford.
Wisconsin	Hon. James W. Lusk.

Of whom Hon. R. H. Henry, of Mississippi, was designated chairman.

On the 3d day of September following, the committee assembled in New York city, and from thence were conveyed to Graystone, Mr. Tilden's suburban residence near Yonkers, in his yacht "Viking," which had been placed at the disposal of the committee for the occasion. Mr. R. H. Henry, the chairman of the committee, in presenting the Resolutions of the Convention to Mr. Tilden, said: —

"Mr. Tilden, — We are before you as the representatives of the National Democratic Convention to deliver into your hands a testimonial of the esteem and admiration in which you are held by the party you so gallantly led to victory in 1876.

"In all ages of the world a grateful people have, in some form, signalized their appreciation of distinguished public service. This has been done, not only as matter of gratitude, but that others, called to trying places of public trust, may be nerved and encouraged to the discharge of duty by example.

"The great party that laid the foundation for free government on this continent — a party you have loved and served so well — but follows a line of precedent as old as the ovation to David on his return from the slaughter of the Philistines, when, in these Resolutions, it recognizes your exalted talents, courage, and fidelity to principle. Had not you, sir, emphatically forbidden it, it would have gone farther, and elected you a second time to the highest office within the power of any people to give.

"The National Democratic Convention accepted your declination and withdrawal from public life with reluctance, but knew the influence of your example as a public officer would not be lost. That example has influenced and will ever continue largely to influence political parties in this country for good. They have

learned from it that with a chief executive officer of sagacity, firmness, and integrity, it is possible to secure what the people of the United States have practically lost, — an honest and cheap administration of public affairs. But it will be no affront to you, sir, when we add that, coupled with this purpose to do you honor, is another and no less fixed determination of the Democratic party to stigmatize now and in coming years all along its march and line of battle the deliberate assault of the Republican party upon constitutional liberty in the nullification of your election.

"It is undoubtedly the duty of all men to forgive individual wrongs and to cover mere personal grievances with the mantle of charity and oblivion; but we know of no precept, sacred or profane, which requires a people to forget or forgive an organization that deliberately assaults the citadel of liberty in trampling under foot the only peaceful method known to their Constitution and laws through which a change of rulers and public policy can be effected.

"It will not be out of place to recall at this time the fact that zealous partisans counselled the exercise of force for the assertion of your title; but it was fortunate for the people that the voice of your reason and the love of your country was then, as ever, stronger than the clamor of passion or the blandishments of power. You, sir, and the men with whom you counselled had the magnanimity and patriotism to await the sober second thought of the country to right the wrong, and, through the peaceful medium of the ballot, resent the outrage. Standing, as we believe, on the verge of that auspicious event, we venture to congratulate you upon the wisdom of your course.

"It only remains for us to tender, with the complimentary resolutions of the great Convention, our individual respect and affection, and to assure you we speak no merely formal words when we express the wish that your valuable life may long be spared, and that its evening may be spent in tranquillity and repose."

To this address on behalf of the committee Mr. Tilden made a brief acknowledgment, and later sent a formal reply.

TRIBUTE TO MR. TILDEN.

REPLY OF MR. TILDEN TO THE ADDRESS MADE UPON THE PRESENTATION OF RESOLUTIONS PASSED BY THE CHICAGO CONVENTION OF 1884.

GRAYSTONE, Oct. 6, 1884.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE, — I thank you for the kind terms in which you have communicated the resolutions concerning me adopted by the late Democratic National Convention.

I share your conviction that the reform in the administration of the Federal Government, which is our great national want, and is indeed essential to the restoration and preservation of the government itself, can be achieved only through the agency of the Democratic party, and by installing its representative in the chief magistracy of the United States.

The noble historical traditions of the Democratic party; the principles in which it was educated, and to which it has ever been in the main faithful; its freedom from the corrupt influences which grow up in the prolonged possession of power; and the nature of the elements which constitute it, — all contribute to qualify it for that mission.

The opposite characteristics and conditions, which attach to the Republican party, make it hopeless to expect that that party will be able to give better government than the debasing system of abuses which, during its ascendency, has infected official and political life in this country.

The Democratic party had its origin in the efforts of the more advanced patriots of the Revolution to resist the per-

version of our government from the ideal contemplated by the people. Among its conspicuous founders are Benjamin Franklin and Thomas Jefferson, Samuel Adams and John Hancock of Massachusetts, George Clinton and Robert R. Livingston of New York, and George Wythe and James Madison of Virginia. For sixty years, from the election of Mr. Jefferson as President in 1800, the Democratic party mainly directed our national policy. It extended the boundaries of the Republic and laid the foundations of all our national greatness, while it preserved the limitations imposed by the Constitution and maintained a simple and pure system of domestic administration.

On the other hand, the Republican party has always been dominated by principles which favor legislation for the benefit of particular classes at the expense of the body of the people. It has become deeply tainted with the abuses which naturally grow up during a long possession of unchecked power, especially in a period of civil war and false finance. The patriotic and virtuous elements in it are now unable to emancipate it from the sway of selfish interests which subordinate public duty to personal greed. The most hopeful of the best citizens it contains despair of its amendment except through its temporary expulsion from power.

It has been boastingly asserted by a modern Massachusetts statesman, struggling to reconcile himself and his followers to their Presidential candidate, that the Republican party contains a disproportionate share of the wealth, the culture, and the intelligence of the country. The unprincipled Grafton, when taunted by James the Second with his personal want of conscience, answered: "That is true; but I belong to a party that has a great deal of conscience."

Such reasoners forget that the same claim has been made in all ages and countries by the defenders of old wrongs against new reforms. It was alleged by the Tories of the American

Revolution against the patriots of that day. It was repeated against Jefferson, and afterward against Jackson. It is alleged by the Conservatives against those who, in England, are now endeavoring to enlarge the popular suffrage.

All history shows that reforms in government must not be expected from those who sit serenely on the social mountain-tops, enjoying the benefits of the existing order of things. Even the Divine Author of our religion found his followers, not among the self-complacent Pharisees, but among lowly minded fishermen.

The Republican party is largely made up of those who live by their wits, and who aspire in politics to advantages over the rest of mankind similar to those which their daily lives are devoted to securing in private business.

The Democratic party consists largely of those who live by the work of their hands, and whose political action is governed by their sentiments or imagination.

It results that the Democratic party, more readily than the Republican party, can be moulded to the support of reform measures, which involve a sacrifice of selfish interests.

The indispensable necessity of our times is a change of administration in the great executive offices of the country. This, in my judgment, can only be accomplished by the election of the Democratic candidates for President and Vice-President.

SAMUEL J. TILDEN.

To R. H. HENRY, Chairman, B. B. SMALLEY, and others, of the Special Committee of the Democratic National Convention.

SUPPLEMENT.

THE FIRST GUN FOR FREE SOIL.

At the threshold of the Free-soil revolt of 1848 Ex-President Van Buren, who was spending the winter in lodgings at Julian's Hotel in Washington Place, New York, said one day to Mr. Tilden as he handed him a roll of manuscript: "If you wish to be immortal, take this home with you, complete it, revise it, put it into proper shape, and give it to the public."

Mr. Tilden replied that he had not the slightest wish to be immortal by any process that would impose upon him at that time any more labor; but he consented to take the manuscript down to the residence of the Ex-President's son, John Van Buren, who then resided in White Street, and he agreed that if John would do half of the work, he would do the other half. John did agree; and a few days after the interview referred to, Tilden and John met at the Ex-President's lodgings to report.

Mr. Van Buren opened the subject by asking what they had done with Niagara Falls. This referred to a somewhat ambitious metaphor which had found its way into the Ex-President's manuscript. "We have struck that out," was the reply. He laughed, as if rather relieved at having an unpleasant duty discharged by other hands, while they went on to read the result of their joint labors.

After the Address had received the combined approval of each party to its composition, the next question was, how to get it before the public. After discussing various plans, they finally decided to issue it as an Address of the Democratic Members of the Legislature. Accordingly, on the 12th of April, Senator John G. Floyd, from the Committee of Democratic Members of

the Legislature to prepare and report an Address, read the paper to his colleagues, by whom it was unanimously adopted. I give the paper entire, partly because it was a joint and several production, and though not all from the pen of Mr. Tilden, all its views were his by adoption; partly because it throws new light upon one of the most grave and critical epochs of Mr. Tilden's political career; partly because Mr. Tilden's contribution to it would be imperfectly appreciated unless read with the context; partly because the document is very rare, and has been forgotten by most of those who are old enough to remember it when it appeared; and finally, because the history of its origin, now first disclosed, adds not a little to its permanent interest and importance. This Address deserves to be regarded as the corner-stone of the "Free-soil" party, as distinguished from the party of unconditional abolition. The name of the author of each contribution to the joint Address is given at the beginning of his contribution.

ADDRESS OF THE DEMOCRATIC MEMBERS OF THE LEGISLATURE OF THE STATE OF NEW YORK.[1]

To the Democracy of the State of New York, —

[John Van Buren.] In pursuance of a time-honored and well-approved custom, the Democratic members of the Legislature, before their final adjournment, ask leave to address their Democratic fellow-citizens throughout the State. The small minority in which they find themselves in the councils of the State commend more strongly than ever to their strict observance those usages of organization which have so often in times past enabled the Democratic party to rise with renewed energy and efficiency from temporary defeat, and have carried it triumphantly through the most severe conflicts. In accordance with the custom for many years uniformly observed by those who have preceded them as representatives of the Democracy at the State capital, they assembled in joint caucus on the 21st day of February last, and by a unanimous vote passed the following resolutions: —

"*Resolved*, That it be recommended to the Democratic electors of each Assembly district in the State to appoint a delegate to a Democratic State Convention for the purpose of nominating candidates for electors of President and Vice-President, for Governor and Lieutenant-Governor, and for such other State officers as are to be chosen by general ticket at the next fall election.

"*Resolved*, That the State Convention be held at Utica on the 13th day of September next, at 12 o'clock, M."

They are confident that the Democracy of the State will see in this simply an act which was expected at their hands, and which it would have been a dereliction of duty in them to omit; nor can they doubt that the attachment of the party to its regular routine

[1] Adopted April 12, 1848.

of nomination heretofore observed will rise above the whinings of factious discontent, which may seek to raise a doubt as to the regularity of the Convention.

The high character of the offices to be filled, and the importance of a judicious selection of candidates in order to secure success, will no doubt insure a full and faithful representation of the Democracy; and the warning of the past will doubtless prevent the bestowal of confidence upon such as have heretofore sought it only to betray.

Since we left our homes to enter upon our duties here, a delegated Convention of the Democracy of the State, convened in strict accordance with the usages of the party by the Democratic members of the last Legislature, assembled at Utica on the 16th of February, which, for the personal and political character of its members, their ability, zeal, and patriotism, as well as in its official proceedings, may well compare with any that ever assembled in this State. Held at midwinter, there were nevertheless but three counties in the whole State unrepresented; and while the full delegation which attended gives the best evidence of the confidence of the Democracy in its regularity, and its published proceedings give the best evidence of its wisdom and political soundness, we cannot refrain from adding an expression of our entire conviction of the propriety of its inception and the excellence of its conclusions.

That assemblage appointed a delegation of thirty-six members to attend the Convention to be held in May next at Baltimore for the nomination of President and Vice-President of the United States; and whatever state of things may be there presented, they will but illy reflect the spirit of the Convention which nominated them, and the sentiment of their mass constituency, if they do not unyieldingly claim to represent them without co-rival in that body, and fully assert and firmly maintain, under any and all circumstances, the principles, the rights, and the honor of the Democracy of New York. While so much is required of them in the discharge of their duty as delegates, their character affords an assurance that their whole duty will be performed.

The present position of the Democratic party in this State claims the serious consideration of all those who feel any attachment to its principles or concern for their perpetuity.

We entered into the political canvass of 1844 united in our principles, under leaders whose lives commended them to our confidence. The result was the election of our candidates for the offices of governor and lieutenant-governor, a large majority in

both branches of the Legislature, and a respectable majority of the congressional delegation; and if anything further were wanting to show our proper organization and great efficiency, it was furnished in the fact that we gave a majority of some six thousand for the present National Executive. At the expiration of two years we find our congressional delegation reduced to a meagre minority, and a governor of the Federal party elected by a large majority; and a third year throws the whole legislative power, by an overwhelming majority, into the hands of our opponents. The same party which gave the President the voice of this State could not bring him within one hundred thousand votes of any respectable opponent; and a portion of that party itself, discarding all its usages and forms of action, have formed a separate and complete organization, under the name of "Hunkers." This section, enjoying the whole patronage of the Federal Government, and professing to act under its advisement, are now assailing the men and the principles of the party they have left, with a bitterness and recklessness unparalleled in the annals of party controversy.

That it has been deemed advisable by the Administration at Washington to remodel the Democratic party in this State by changing its direction without impairing its efficiency, is made apparent by the neglect of those who enjoyed the confidence of the Democracy, and by the bestowal of its patronage upon such as had received few, if any, marks of popular favor; that the attempt, however, has been eminently unsuccessful, the meagre list of hirelings enlisted for this purpose most conclusively shows.

Unable to control the action of the Democratic party, they have formally withdrawn from it, and for the time have perhaps reduced it to a minority in the State. That this secession is to be regretted, we cannot with truth admit, the seceders consisting principally of those whose adherence to us has been simply a matter of pecuniary interest, and whose departure has been occasioned by the same consideration. But whether desirable or not, such is the fact; and they hold in relation to the Democratic party a position as antagonistic in organization and in principle as the Federal party itself. That the Democratic party will rise from this temporary minority by the excellence of its principles, purified and strengthened by the departure of those who have so long brought odium upon its doctrines, no man can doubt; and so wide-spread and all-pervading is this opinion among the masses of the Democracy that we feel constrained sincerely to declare that from the best information we have been able to obtain from a free interchange of opinion with each other, and with such

intelligent Democrats as have visited the capitol during the present session of the Legislature, so far is the Democracy from desiring a union with this new party, that every attempt to effect it would be considered a corrupt arrangement among party leaders for their own selfish purposes, and would be repudiated with a unanimity and a contempt which could scarcely be exceeded by formally uniting with the Federal party itself.

Before entering upon the main topic of this Address we desire to refer briefly to two measures of reform which the triumph of the Democratic party of the nation in 1844 has secured to the people. A protracted struggle, between privilege on the one hand and freedom on the other, resulted, in 1846, in the triumph of the latter in the substitution of a revenue policy calculated to relieve the burdens of labor from a system falsely denominated "protective," whose operation has been to oppress labor and take from its mouth the bread it had earned. The advance toward commercial freedom made by the tariff law of 1846 was a great victory for liberal principles, the consequences of which are seen everywhere in the increasing prosperity of agricultural, commercial, and mechanical industry. With her boundless resources and the extraordinary facilities for traffic presented by her great natural and artificial channels of trade, New York wants freedom, — freedom from restrictive taxation. Give her that, and she can protect herself. It is sometimes suggested that the tariff law referred to cannot produce revenue sufficient to meet the heavy engagements of the Federal Government incident to a state of war. If this is true, it does not follow that industry alone should be taxed to meet extraordinary expenditures, as it would be to a great extent by the increase of duties on the commodities consumed by the productive classes. In public affairs as in common life, the true course to adopt when expenditure exceeds income, is retrenchment. Cut down the expenditures; abolish unnecessary offices and salaries; restore simplicity and economy to the administration of the government. This is the remedy which experience has always shown to be practicable and efficient.

When we remember that the present scale of duties on importations is high compared with the tariff sanctioned by the Fathers of the Republic, we cannot but express the hope that all agitation of the public mind with a view to restore the exploded system of protective taxation has forever ceased. The adoption of the Independent Treasury system by the Twenty-ninth Congress was another important measure of safe progress in conformity with sound principles of political economy. If adhered to in the spirit and

purpose in which it was adopted, it will gradually, but certainly, restore the currency of the Constitution, — gold and silver, — and replace the present frail and explosive system of exclusive paper currency with coin, or paper actually representing and redeemable in coin. The fraudulent scheme of bank paper promising to do the impossible, must have its day and must have its end. Its exaction and oppressions of labor will one day become apparent; and then, like all other devices to cheat and defraud mankind, this, the greatest of them all, must yield to the demands of justice. But its hour has not yet come. The failure of eleven safety-fund and twenty-six free banks has not yet taught our legislators wisdom. They wait for a sadder experience, and they will have it.

[Martin Van Buren.] We cannot but congratulate you that the war which has for two years been waged between our country and Mexico is likely to be brought to a speedy and honorable termination. The conflict of nations in the field is at the very best a calamity which every humane heart must deplore, and which it is the duty of every government to avoid so long as it may be avoided consistently with the interests and honor of the State; but no people can long submit to acts of aggression by another without a forfeiture of that dignity and character which challenge respect and which are the only title to equality and consideration in the intercourse of nations.

All our varied relations with Mexico have been honorable to our country. Our promptness to acknowledge her independence; our forbearance under wrongs inflicted upon our citizens; the temper of our negotiations; the triumphant advance of our armies through many a hard-fought field to the gates of her capital, ever bearing aloft the olive-branch amid the very smoke and din of battle, — demand the respect of the civilized world.

It is deeply to be regretted that attempts should have been made to throw the various questions arising out of the initiation and conduct of the Mexican war, into the arena of political strife. However we may differ at home, every lover of his country must desire that we should be known abroad as one and undivided; that, being at war, the only question should be how it might best be brought to an honorable conclusion. That, however, has not been the case. Such circumstances in the progress of the war as seemed available for party purposes have been eagerly seized upon, and many, whose party zeal overbalanced their patriotism, have not hesitated to embark in a systematic attempt to wound the executive administration, even through the bleeding sides of their own country. Especially is it to be regretted that an eminent

statesman[1] of the Southwest should have stepped from that retirement which he has so long affected to desire, and which the people have repeatedly expressed their willingness that he should enjoy, to sound the rallying cry for the great and powerful party of which he is the acknowledged head, to array themselves against their own country, and in effect, if not in intent, to prolong the contest and aggravate its horrors, by paralyzing the action of our armies abroad and stimulating to renewed energy the armies of the enemy.

The promptitude and heartiness with which this cry has been echoed back from a thousand Federal presses to the Vatican of Lexington from which the decree issued, — the zeal with which the "instructions" have been "bettered" by the resolutions adopted by the Legislature of our own State, — leave no room to doubt that the Mexican war is to be one of the principal elements in the next Presidential campaign. To suppose that the issue thus tendered would be declined, would be to question the patriotism of the Democracy of the country, — would be saying that Democrats at home were unwilling to sustain by argument what Democrats abroad had accomplished by arms.

But while the existence of war demands a united support of our country during its continuance, the return of peace may bring with it questions whose importance demands a full discussion, and the settlement of which may require the prudent counsels of our wisest statesmen.

It appears to be conceded upon all hands that whenever peace shall be made, one of its conditions is necessarily to be the cession of territory by Mexico to the United States. Such territory, whatever its extent may be, is now free from the pollution of slavery; and the questions which will arise by its annexation will be, whether the mere act of cession to the United States of America, "by the grace of God free and independent," changes it from a land of freedom to a land of slaves; and if not, whether such change should be made by any subsequent act of the National Legislature.

The subject of excluding slavery from territories of the United States where it does not now exist has for some time past engaged the attention of the people of this country; and the present Legislature has instructed the Senators and requested the Representatives of this State in Congress to procure, if possible, the insertion of a provision securing this object in any act which may be passed by Congress for the erection of a territorial government.

[1] Henry Clay.

The position of the Republicans[1] of this State was correctly defined at the recent Democratic Convention held at Utica, in pursuance of established usage, to send thirty-six delegates to represent this State in a National Convention for the nomination of Democratic candidates for the offices of President and Vice-President of the United States.

These positions were, — First, that the principle of the ordinance of 1787, by which the institution of slavery was excluded from all the unsettled territories then owned by the United States, whether derived from Slave or Free States, should be applied to Oregon and such portions of Mexico as may be ceded to the United States whenever, in pursuance of the invariable usage of the Federal Government, territorial governments are established for them by Congress; and Second, that, sensible of the difficulty of maintaining the organization of the Republican party of the Union as it has hitherto existed, if those who take different sides on this exciting question should insist upon a declared conformity to their respective opinions on the part of the candidates for the Presidency, the Democracy of New York had never made this a test question, and felt called upon to apprise their Southern brethren who persisted in doing so, what would be the inevitable effect of such action.

In the justness and liberality of these positions it might well have been believed true Democrats in all sections of the Union could cordially concur; and although the views of the Utica Convention, expressed with marked moderation and a commendable regard for the feelings of our Southern brethren, have not received the publicity to which we supposed them entitled on every principle of justice and fair dealing, they seem to have attracted a considerable share of public attention and to have met with a reception as unexpected to us as it was undeserved.

The Democrats of Alabama have since assembled in State Convention for the purpose of sending delegates to the same National Convention. They have adopted resolutions summarily denying the power of Congress or the people of the territory, either by direct legislation or through the action of a territorial legislature,

[1 "Republican" was the name by which the Democratic party was distinguished from the Federal party during Jefferson's administration, and until some time after the Federal was merged in the Whig party. For a time, indeed, the Democratic party bore the name of "Democratic Republican," the latter name being finally dropped as superfluous. The Free-soil party, which was formed in 1848, afterward, at the suggestion of Francis P. Blair, Sr., took the name of "Republican," which it has borne ever since. — Ed.]

to prohibit the introduction of slaves into territories now free, and affirming that such prohibition can only be made by a State Constitution framed by the people of the territory preparatory to their admission into the Union as a State.

In the mean time they insist that those who choose to do so may rightfully settle the territory in question with a slave population. To enforce these positions they pledge themselves to the country and to each other, under no political necessity whatever, to support for the office of President or Vice-President any person who shall not be openly and avowedly opposed to either of these forms of excluding slavery from the territories of the United States, which they denounce in their resolutions as being alike in violation of the Constitution and of the just and equal rights of the citizens of the Slave-holding States. They also instruct and bind the delegates they select to the National Convention to vote for no man for either of those places who will not unequivocally avow himself to be so opposed. The same positions have since been re-affirmed by the Democratic State Convention in Virginia, assembled to select delegates to the National Convention; and the proscribing decree against all who will not come forward and subscribe the creed sought to be enforced, is referred to with apparent enthusiasm as "the noble resolution of Alabama."

And the Democracy of Florida, one of the youngest States in the Union, in selecting their delegates to the National Convention, have within a few days, in a manner at least as exceptionable, assumed similar grounds, seeming to be determined that the Democracy of New York should re-assert their principles, or forever hereafter be foreclosed by their silence. No reasons have been offered by either Convention to sustain the positions thus assumed, and the people of the North have thus not even been afforded, so far as we have observed, the satisfaction of knowing the grounds upon which this ostracism has been pronounced. Nay, even the sensibility which we should expect to have found awakened by the supposed necessity for so abrupt a severance of ancient and honorable political ties seems not to have been aroused in the least degree on the part of old political associates who have found themselves forced to so harsh a termination of intercourse.

We shall leave them to judge, as they are abundantly able to do, what is the appropriate course for them to pursue. Even more, we are content that our Southern friends shall stand fully justified if we are unable to show the fairness and constitutionality of the course pursued or advocated by the Democrats of this State in regard to the entire subject of slavery. Vitally important

as is the exclusion of slavery from territory now free, we do not desire it to be effected through the exercise of any doubtful power of the Constitution.

The founders of the Republic earnestly and actively desired to restrict the spread of slavery. The Constitution of the United States was the second great work of those eminent statesmen and patriots. It aimed to give the fullest extension of freedom to man that was consistent with the actual and inevitable condition of their beloved country. While it was framing, the Old Congress of the Confederation were in session under their eyes, and engaged in the noble enterprise of excluding slavery from all the territories which were then in the undisputed possession of the United States. If, then, the framers of the Constitution, penetrated with the evils of slavery, anxious for its limitation, amelioration, and eventual abolition, having before them a Congress saving from this evil all the territory which the United States then owned, were so short-sighted or indifferent as not to provide for carrying forward this good work in regard to future acquisitions, let the humiliating confession be made to the world.

We invite to our shores the children of labor and the votaries of liberty from every clime, by holding out to them the promise of an equal participation in the blessings of free institutions; we receive accessions to our territory of entire States, and consent to their admission into our glorious Union, under the impression that the enlargement of our national boundary is but another term for an extension of the area of freedom. If this be a delusion, as it is if those acquisitions may be made the abode of slavery, good faith demands that the delusion should be acknowledged. We have acted upon the belief that the framers of the Constitution made ample provision for the adoption of every measure that might become necessary to secure the true happiness of all the people that should seek a shelter under the institutions to which our glorious revolution gave birth. Amongst the first and greatest of these is the securing to the white laborer a home and an honorable station in all the free territories that the United States may possess or acquire. To do this we believe it indispensable that black slaves shall be excluded therefrom; and we entertain no doubt that this object can properly and constitutionally be effected in the mode we have instructed our Senators and requested our Representatives to pursue. We can well conceive that honest men may have doubted the policy of seeking the accomplishment of this object by attaching a proviso to a bill appropriating money for the purchase of territory, or by its insertion in a treaty by

which such purchase was effected. They might suppose that in either of these modes the great object of extending our territory would be embarrassed, whilst the greater object of extending freedom could be otherwise secured. We know, too, that a cover was thus furnished to the false-hearted men of the North, who are operated upon by Federal patronage and a factious desire to prostrate the just influence of our State, under which, without directly meeting the great question of freedom itself, they might shelter themselves by the pretence that the one provision was an unnecessary abstraction, because new territory might not be acquired, and that the other was unattainable, because no treaty containing it could secure a ratification.

We can therefore well appreciate the conciliatory disposition which induced the Democrats assembled at Herkimer so far to modify their position on this subject as simply to insist upon a guaranty that territory of the United States then free should remain so until its inhabitants formed a State constitution for themselves, leaving to such inhabitants entire liberty at such time to choose freedom or slavery. This compromise was indicative of the forbearance which has always eminently characterized the conduct of Democrats, who are ever tolerant of an honest difference of opinion, and who never jeopard the noble ends they pursue by any unnecessary sternness in regard to details not essential to their success.

The question now meets us in a practical form. Oregon has remained for years without a territorial government, and its people petition Congress for this protection. New Mexico and California are in the possession of the United States, never to be surrendered, and the President calls upon Congress to organize territorial governments over them. These vast regions are now free from the evil of slavery; and we, who propose to insert in the acts for their government a provision securing to them this exemption until they shall become States, are told, — not that it is too early, not that it is unnecessary, not that it is an abstraction, not that we may lose them, not that we are embarrassing the prosecution of a just war in which the Government is engaged, — but we are told that our project finds no warrant in the Constitution, and that our advocacy of it has subjected us to the pains and penalties of excommunication from the Democratic family.

No resident of a Free State would, we think, venture to claim that the establishment of slavery at this day in territories of the United States where it does not now exist, would be either

wise or expedient. Not even the allurements of the Presidency could, we hope, induce an adhesion to a heresy so revolting. The extent to which the public men of the North have been induced to advance toward the South upon this question has been due to the plausibility of a theory that the people of the territories themselves have the right to elect whether slavery shall or shall not exist amongst them before they are organized into States, but that Congress has no power over the subject. Experience has shown that under such a rule Slave States could, and probably would, be created; and those citizens who were willing thus to suffer this evil to be extended, doubtless supposed that their views would be acceptable to the slaveholding population. But the reference we have already made to the proceedings of Alabama, Virginia, and Florida shows that even this theory has fallen under the same condemnation which has been pronounced upon every other that did not concede the absolute right of the slaveholder to settle with his slaves upon free soil. The inventors and advocates of this theory, therefore, though manifesting a condescension which would be commendable in a good cause, have not only failed to secure the favor of our Southern brethren, but have been unable to protect themselves any more than us from political ostracism. Slaveholders claim a right independent of any action of Congress, or of the people of the territories, to hold slaves in a free territory. They concede that the people of the territory, in forming a constitution prior to their admission as a State, may prohibit slavery, but deny their power to do so otherwise. The reason for this refined distinction as to the constitutional power of the same people, has not been assigned; and though the effect of the distinction in securing the propagation of slavery and its permanent establishment is obvious, the ground on which it rests cannot be discovered. That the position must be maintained by those who wish to uphold the institution of slavery, is apparent from the fact that human slavery cannot be sustained upon any principle of natural justice or national law; and an admission that power over the subject is not vested in those who form State constitutions would strike at the root of the evil, and proclaim freedom to the slave through the length and breadth of the land.

The assertion, then, of a want of Constitutional power in Congress to prohibit the original establishment of slavery in territories now free, is the last intrenchment of the propagandists of slavery. It is due to them and to ourselves to examine it with care.

If there were doubt on the face of the Constitution, the disposition of its framers and their advisers upon the general subject

would be entitled to great weight in its construction. The truly exalted sentiment expressed by the founders of the government in regard to slavery, and their unremitted efforts to bring its existence in the United States, as far as practicable, into harmony with the spirit of the Revolution, have been justly described in the admirable Address of the recent Democratic State Convention. As there was no practicable way to remove it altogether, they endeavored to accomplish their object by measures which secured the amelioration of its condition, and the prevention of its increase by importation and its spread into territories which it had not yet reached. In these patriotic and philanthropic efforts, the truth of history attests that the statesmen of the South were, as it was obviously proper that they should be, the most efficient; and among them those of Virginia were pre-eminently so. Nor is it by any means a forced inference that the very extraordinary political precedence which has ever since been awarded to the statesmen of Virginia, not only by their contemporaries of the South, but of the whole Union, is in no small degree to be attributed to their early, able, enlightened, and consistent advocacy of this noble project. We might fill a volume with the exhibitions of these feelings on their part, but we have only space for a few.

The Father of his Country, who was President of the Convention, in a letter to Robert Morris, says: —

"I can only say there is not a man living who wishes more sincerely than I do to see a plan adopted for the abolition of it [slavery]. But there is only one proper and effectual mode by which it can be accomplished, and that is by the legislative authority; and this, so far as my suffrage will go, shall not be wanting."

Mr. Jefferson, although not a member of the Convention, exerted at the time an influence over public opinion scarcely second to that of Washington, and like that statesman, though a planter and a slaveholder, never forgot that he was a philanthropist and patriot. In his original draft of the Declaration of Independence, when denouncing the King of Great Britain for the encouragement he had given the slave-trade, Mr. Jefferson, among other equally severe invectives, charges him with having "waged a cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him." "This piratical warfare," he said, "the opprobrium of infidel Powers, is the warfare of the Christian King of Great Britain, determined to keep up a market where men should be bought and

sold; he has prostituted his negative for suppressing any legislative attempt to restrain this execrable traffic."

Patrick Henry said: —

"I believe a time will come when an opportunity will be offered to abolish this lamentable evil. Everything we can do is to improve it if it happens in our day; if not, let us transmit to our descendants, together with our slaves, a pity for their unhappy lot and our abhorrence of slavery."

Mr. Madison, speaking in one of the numbers of the "Federalist" of the restriction upon the power of Congress, says: —

"It were doubtless to be wished that the power to prohibit the importation of slaves had not been postponed until 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account either for the restriction on the General Government, or for the manner in which the whole clause was expressed. It ought, however, to be considered a great point gained in favor of humanity that a period of twenty years may terminate forever within these States a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period it will receive a considerable discouragement from the Federal Government."

Mr. Monroe said: —

"We have found that this evil has preyed upon the very vitals of the Union, and has been prejudicial to all the States in which it has existed."

George Mason, speaking of the slave-trade, said in the Virginia Convention: —

"Under the Royal Government this evil was looked upon as a great oppression, and many attempts were made to prevent it; but the interests of the African merchants prevented its prohibition. No sooner did the Revolution take place than it was thought of. It was one of the great causes of our separation from Great Britain. Its exclusion has been a principal object of this State, and most of the States of the Union. . . . As much as I value the Union of the States, I would not admit the Southern States into this Union unless they agreed to the discontinuance of this disgraceful trade, because it would bring weakness, and not strength, into the Union."

It was under the prevalence of such feeling at the South, and with but one sentiment on the part of the Northern members as well in Congress as the Convention, with the venerable Franklin at the head, that the exclusion of slaves, in the language of Mr. Jefferson's particular friend and confidant, George Mason, was immediately "thought of at the close of the Revolution." The cession of their unsettled lands to the Federal Government by

the States was soon in progress, and the exclusion of slaves from them the first action that was sought for in regard to them. The cession by Virginia of the Northwestern Territory, out of which the States of Ohio, Michigan, Indiana, Illinois, and Wisconsin have since been formed, was no sooner made than Mr. Jefferson, in connection with Messrs. Chase and Howell, introduced into the old Congress of the Confederation his celebrated resolution applicable to the States to be formed out of said territory in these words: —

"*Resolved*, That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crime, whereof the party shall have been duly convicted to have been personally guilty."

The initiative thus taken, the matter went forward until the passage of the ordinance of July, 1787, by which the introduction of slavery was forever excluded from all the territories then in the undisputed possession of the United States, by far the greater part of which had been ceded by a Slave State. The Convention to form a Federal Constitution had commenced its sitting in May preceding, and was then in session at the same place. Seeing what Congress had enacted in respect to the territories then owned by the United States, the Convention promptly forwarded the good work by giving its direct sanction to a prohibition of the introduction of slaves into the States of the Confederacy from abroad after a day named. Nor was this all that it did in furtherance of the great object which Congress and the people had in view in regard to the institution of slavery. The articles of Confederation did not contain authority for the progressive admission of new States into the Union, and its authority over territories was at best imperfect. It was consequently questioned whether a ratification of the ordinance of 1787 by Congress, under the new Constitution, was not necessary to its validity. Such ratification it received at its first session. This circumstance served also to remind the Convention of the necessity of remedying the defect in the articles of the Confederation by authorizing an indefinite admission of new States, and giving to Congress general power to legislate for the territories out of which they might be formed. The first was accomplished by providing that "new States may be admitted by the Congress into the Union," and the second by declaring in the next clause in the section that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territories or other property of the United States."

This authority, it will be recollected, is given to Congress. Had it been intrusted to the executive or judicial department of the government, questions might have arisen as to the manner of its exercise. But Congress is vested with the legislative power of the government only. It acts by the passage of laws. Authority to it to prescribe "rules and regulations" respecting the territories, therefore, if there could be a doubt in any case of the signification of the terms, is necessarily a power to legislate for them; and the character of the legislation intended is distinctly pointed out by the use of terms always employed to describe laws touching particular and private interests, in their minutest details, as well as comprehending government itself. Never was the power of language in the hands of those who are masters of the art more strikingly displayed than by the framers of the Constitution. Mr. Madison and Mr. Morris are well understood to have contributed their full share to the triumph of the Convention in this regard. The terms "rules and regulations," used in regard to territories, were employed in the distribution and investment of legislative power when the power to be conferred was intended to be general and paramount. Power was given to Congress to regulate commerce with foreign nations; to make rules concerning captures, etc.; to make rules for the government and regulation of the land and naval forces; to alter State regulations in respect to the time, place, and manner of holding elections; to coin money and regulate the value thereof. They were forbidden to give preference, by any regulation of commerce, to the ports of one State over another, and the appellate jurisdiction of the Supreme Court in certain cases was made subject to such regulation as Congress should make. It is not necessary to say that the intention was, and that the uniform practice under the Constitution has been, to carry out all these powers by the legislation of Congress. So, in like manner, Congress were to have power to dispose of, and make all necessary rules and regulations respecting, the territory or other property belonging to the United States. To give the widest scope to the legislative power of Congress over the territories, both terms are used; namely, "rules" and "regulations." In respect to the seat of government, forts, magazines, arsenals, etc., the power of exclusive legislation was given in terms, because it was necessary to divest and exclude an existing power of State legislation. No such necessity existed in regard to the territories, and hence the use of the general terms employed in other parts of the Constitution to confer legislative power. Those used in regard to territorial legislation were not only the most general, extending

to everything that was needful and respected the territory, but, as appears on the face of the Constitution itself, the term "regulations" was used by the Convention as synonymous with "laws" and for the purpose of describing laws in regard to slavery. In the section immediately preceding it is declared that "no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged," etc., — thus directly referring to the laws of the State against slavery, under the description of State regulations.

In addition to the plain sense of the Convention, in the use of the terms "rules" and "regulations" apparent upon the face of the Constitution, its history and the whole current of proceeding under it may be referred to as establishing the same position. Mr. Madison, as will be seen by a reference to the thirty-eighth number of the "Federalist," was among those who doubted the power of Congress, under the Articles of Confederation, to legislate for the territories as was done by the ordinance of 1787, and in No. 43 will be found his full recognition of the fact that all necessary power to this end had been vested in Congress by the Constitution. The Journals of the Convention show the agency he had in securing that object. On the 18th of August, 1787, he submitted, in order to be referred to the Committee of Detail, the following powers as proper to be added, with others, to those of the General Legislature, namely: —

"First, to dispose of the unappropriated lands of the United States.

"Second, to institute temporary governments for new States arising therein."

And they were referred accordingly.

The Committee of Detail, in their Report, made provision for the admission of new States, but not for the disposition of the public lands or the establishment of territorial governments. In the subsequent proceedings of the Convention on their Report, Mr. Morris moved that "the Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," — a motion which was agreed to. The whole subject was then referred to a committee of style and revision, of which Mr. Morris and Mr. Madison were members; and the article as it stands in the Constitution was reported by that committee and finally adopted. Mr. Morris showed his own understanding of the term "regulation" by applying it only two days before to the clause of the Constitu-

tion prohibiting the States from laying imposts, etc. A very brief reference to the proceedings of Congress at the time, and for years afterwards, will show that those who took part in the Convention, as also their contemporaries, invariably spoke of the power conferred by these terms as that of legislation, and — what is still stronger — of legislation upon the subject of slavery. In the cession from North Carolina to the United States, the term is thus used in the Act of Cession, from which the following is an extract: —

"Fourthly, that the territory so ceded shall be laid out and formed into a State or States containing a suitable extent of territory, the inhabitants of which shall enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the western territory of the United States; that is to say, — whenever the Congress of the United States shall cause to be officially transmitted to the executive authority of this State an authenticated copy of the Act to be passed by the Congress of the United States accepting the cession of territory made by virtue of this Act, under the express conditions hereby specified, the said Congress shall at the same time assume the government of the said ceded territory, which they shall execute in a manner similar to that which they support in the territory west of the Ohio, shall protect the inhabitants against enemies, and shall never bar or deprive them of any privileges which the people in the territory west of the Ohio enjoy. Provided always that no regulation made or to be made by Congress shall tend to emancipate slaves."

Luther Martin, in his celebrated Report to the Legislature of Maryland of the proceedings of the Convention, which is so frequently referred to for explanation of its intentions, speaks of the enactments made and demanded upon the subject of slavery, and describes them as "regulations."

In July, 1790, petitions upon the subject of slavery and the slave trade were presented to Congress by the Quakers of Philadelphia and New York, and by Dr. Franklin, who was himself a prominent member of the Convention and president of a Pennsylvania society for the promotion of abolition. In the debate which took place in regard to their reference, the opposers and supporters of it thus referred to legislative provisions on the subject.

Mr. Stone, of North Carolina, said he had not approved of the interference of Congress in this business. He thought that persons who were not interested ought not to interfere. Such interferences savored very strongly of an intolerant spirit, and he could not suppose that any one of the States had a right to interfere in the internal regulations of another. States were not accountable to each other for their moral conduct.

Mr. Smith, of South Carolina, said he applied these principles to the case in question, and asked whether the Constitution had in express terms vested the Congress with the powers of manumission, or whether it restrained the States from exercising that power, or whether there was any authority given to the Union with which the exercise of this right by any State would be inconsistent? If these questions were answered in the negative, it followed that Congress had not an exclusive right to the power of manumission. Had it a concurrent right with the States? No gentleman would assert it, because the absurdity was obvious. For a State regulation might differ from a Federal regulation, and one or the other must give way. As the laws of the United States were paramount to those of individual States, the Federal regulations would abrogate those of the States; consequently the States would be divested of a power which it was evident they never had yielded, and might exercise whenever they thought proper.

Roger Sherman desired the refereuce "because [referring to the State laws] several States had already made some 'regulations' upon the subject;" and in the Report made upon the petitions — a Report which, being made exclusively by Northern men, and having received the deliberate sanction of the House, for a long time relieved all apprehension in the Slave States in regard to interference — there occurs this language, —

"Secondly, that Congress have no power to interfere in the emancipation of slaves, or in the treatment of them within any of the States; it remaining with the several States alone to provide any 'regulation' therein which humanity and true policy might require.

"Thirdly, that Congress have authority to restrain the citizens of the United States from carrying on the slave-trade for the purpose of supplying foreigners with slaves, and of providing, by proper 'regulations,' for the humane treatment during their passage of slaves imported by the said citizens into the States admitting such importation."

But the proceedings upon these petitions are of far greater importance, as affording us a solemn, full, and explicit declaration of Mr. Madison, who had first introduced the subject of legislation for the territories into the Convention, and was a prominent member of the committee which reported the clause of the Constitution upon which the present question has at this late day been raised. The reference of the petition was opposed upon the ground that as Congress were prohibited from interfering with the slave-trade before 1808, they could do nothing in the matter. The subject occupied the attention of Congress for several days. Mr. Madison from the first advised a silent acquiescence in the reference. On

the second day he felt himself obliged to come out and be more explicit; and in reply to the allegation that Congress could do nothing in the matter, he said he admitted that Congress was restricted from taking measures to abolish the slave-trade, yet there were a variety of ways by which they could countenance the abolition of it, and thus might make some regulations respecting the introduction of slaves into the new States to be formed out of the western territories, different from what they could in the old settled States. He thought the subject worthy of consideration.

Another reporter gives Mr. Madison's remarks thus: —

"He (Mr. Madison) adverted to the western country and to the cession of Georgia, in which Congress have certainly power to 'regulate' the subject of slavery, which shows that gentlemen are mistaken in supposing that Congress cannot constitutionally interfere in the business in any degree whatever. He was in favor of committing the petitions, and justified the measure by repeated precedents in the proceedings of the House."

This was the deliberate opinion of Mr. Madison, pronounced in the hearing of several of his associates in the committee from the Slaveholding States, at the second session of Congress after the adoption of the Constitution. It would be a waste of time to enlarge upon the weight which is pre-eminently due to the opinion of such a man, and more particularly upon such a question. In Virginia certainly it would be superfluous, — as long, at least, as his celebrated Report upon the Alien and Sedition Acts constitutes their text-book on constitutional questions.

The views of the framers of the Constitution thus cited are confirmed by a reference to the expositions of approved commentators on the Constitution.

Rawle on the Constitution, p. 237, says: —

"In these [Admiralty Jurisdiction Cases] the subjects are limited; but a general jurisdiction appertains to the United States over ceded territories or districts."

Story on the Constitution, pp. 195, 198: —

"No one has ever doubted the authority of Congress to erect territorial governments within the territories of the United States under the general language of the clause 'to make all needful rules and regulations.' Indeed with the ordinance of 1787 in the very view of the framers, as well as of the people of the States, it is impossible to doubt that such a power was deemed indispensable to the purposes of the cessions made by the States.

"The power of Congress over the public territory is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in cessions, or by the ordinance of 1787, under which every part of it has been settled."

Not only, therefore, was this power of legislation given to Congress by the framers of the Constitution deliberately, designedly, and explicitly, — not only has its existence been distinctly avowed by the most distinguished among the fathers of the Constitution, Mr. Madison, and set forth as clear and indisputable by our most able writers upon public law, — but its validity has also been solemnly confirmed by the decisions of our own Court of Last Resort and by the Supreme Court of the United States. The language of our State Court of Errors in the case of Williams *vs.* The Bank of Michigan (7 Wendell R. 554) is, —

"All power possessed by the Government of Michigan was derived from the act of Congress. Territories have no reserved power, as in the case of States admitted into the Union; the authority of Congress is supreme and unlimited, unless made otherwise by the cessions of lands composing those territories."

In the case of McCullock *vs.* The State of Maryland, decided in 1819 (4 Wheaton 422), Chief Justice Marshall, who delivered the opinion of the Court, commenting on the authority of Congress to make laws for executing granted powers, refers in illustration to "the universal acquiescence in the construction which has been uniformly put on the third section of the fourth article of the Constitution," and says: "The power to 'make all needful rules and regulations respecting the territory or other property belonging to the United States' is not more comprehensive than the power to make all laws which shall be necessary and proper for carrying into execution 'the powers of government;' yet all admit the constitutionality of a territorial government."

In the case of The American Insurance Company *vs.* Canter, decided in 1828 (1 Peters, 542), Chief Justice Marshall, who delivered the opinion of the Court, commenting on the sixth article of the treaty ceding Florida to the United States, and declaring that its inhabitants are to be "admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States," says: "It is unnecessary to inquire whether this is not their condition, independent of stipulation. They do not, however, participate in political power; they do not share in the government till Florida shall become a State. In the mean time Florida continues to be a territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States."

In the case of the United States *vs.* Gratiot (14 Peters, 637),

Judge Thompson, who delivered the opinion of the Court, commenting on the power given to Congress by the fourth article, third section, of the Constitution of the United States, says, "This power is vested in Congress without limitation, and has been considered the foundation upon which the territorial government rests." In the case of McCullock *vs.* the State of Maryland, the Chief Justice, in giving the opinion of the Court, speaking of this article and the power of Congress growing out of it, applies it to territorial government, and says, "All admit their constitutionality." And again, speaking of the cession of Florida (in the case of the American Insurance Company *vs.* Canter) under the treaty with Spain, he says that "Florida, until she shall become a State, continues to be a territory of the United States, governed by that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States."

These views have been carried out in the acts of the Federal Government from its commencement to the present day, without dispute or exception.

In 1798 an Act was passed authorizing the President (Adams) to establish a territorial government for the Mississippi Territory in all respects similar to that established for the Northwestern Territory in 1787, except the clause against slavery. To show the extent of the power of legislation over territories exercised by Congress without dispute, it will not be amiss to allude to some of the provisions of the ordinance of 1787 which were here made law in Mississippi. It regulated, — first, descents; second, rights of dower; third, devises; fourth, conveyances; fifth, religious freedom; sixth, the right of *habeas corpus* and trial by jury, etc. It was under an Act of Congress prescribing the rights and duties of parties in these respects that the Mississippi Territory was settled and continued until its admission as a State. But this was not all. It contained a clause prohibiting the introduction of slaves from abroad under severe penalties, and besides declaring the slave so introduced to be free. This was, it will be perceived, ten years before Congress had a right to pass a similar law applicable to the States.

In the year 1800 a territorial government was established for the Territory (now State) of Indiana, and the provisions of the ordinance of 1787, including that against slavery, was applied to it. In 1804 a territorial government was established for the Territory of Orleans, a portion of Louisiana, with legislative provisions having the strongest bearing upon this question. The power

of the territorial legislature was to extend to all the rightful subjects of legislation. The law respecting fugitives from justice and persons escaping from their masters; the law prohibiting the carrying on the slave-trade from the ports of the State to any foreign place; the Act to prevent the importation of certain persons into certain States wherein, by the laws thereof, their introduction is prohibited, — were made applicable to the territory; and a special clause was inserted in the Act not only prohibiting any person from bringing slaves into the territory from abroad, but extending so far as to prohibit any person from bringing slaves into the territory from any port or place in the United States which had been imported into said State or place since 1798, under severe penalties. It contains also the following provision: "And no slave or slaves shall, directly or indirectly, be introduced into said territory except by citizens of the United States removing into such territory for actual settlement and being at the time of such removal the *bona-fide* owner of such slave or slaves," under heavy penalties. This Bill was passed upon great consideration, and was supported by the Southern members with almost entire unanimity. The yeas and nays were taken in both Houses on its final passage. In the Senate there were but three votes against it, and but one of them was given by a Southern man. In the House of Representatives, but twenty-one, and not to exceed half a dozen of these were from the Slave States.

In 1805 a territorial government was established by Congress for Michigan, and in 1809 for Illinois; and the provisions of the ordinance of 1787 for the government of the Northwestern Territory were applied to them, with other provisions, showing an unrestricted right of legislation claimed and exercised over them by Congress. A like government was established by Congress for Missouri, and it was declared by the Act organizing it that the territorial legislature should have power to make all laws in all cases, civil and criminal, for the good government of the territory, not repugnant to or inconsistent with the Constitution and laws of the United States.

In 1819 a like government was established for Arkansas, with similar powers. In 1817 a like government was established for the territory of Alabama, and the laws then enforced in Mississippi — including an express prohibition against the introduction of slaves into the territory from abroad — were applied to the territory of Alabama by Act of Congress.

In 1822 a like government was established for Florida, and legislative power, extending to all "the rightful subjects of legis-

lation," granted to it by Act of Congress, with a prohibition against the bringing of slaves into the territory from abroad.

In 1836 a like government was established for Wisconsin; and by the Act of Congress directing its organization it is enacted that the "legislative power of the territory shall extend to all rightful subjects of legislation," but laws interfering with certain enumerated interests of the United States to be null and of no effect. The ordinance of 1787, as well in regard to the rights and privileges it conferred as to its restrictions, including that against slavery, are expressly applied to the territory. To this a new feature in regard to the legislation of Congress for the territories is added, by a clause extending all the laws of the United States to the territory so far as the same, or any provision thereof, may be applicable.

In 1838 the Territory of Iowa was organized upon principles in all respects similar.

May we not safely challenge an examination of our public archives for a more solemn recognition of any one principle than is here exhibited of that we contend for? What is it? First, a series of Acts of Congress, embracing the principle, passed at short intervals during the last fifty years and approved by Presidents Washington, Adams, Jefferson, Madison, Monroe, Jackson, and Van Buren, — Acts to which it would have been their sworn duty to object if they had doubted their constitutionality. Second, Acts of a character not less solemn than that of organizing the government, prescribing the rights and duties, personal and political, regulating the estates, their descent and the manner of disposing of them, of the inhabitants of eleven territories, nine of which have actually become States and members of the confederacy, and the remaining two are virtually such. Third, Acts, in six of which, including the provision for Ohio, the existence of slavery in the territories was prohibited expressly and forever, and in all of which, with one exception, express enactments were made, equally asserting the constitutional power in Congress of legislative control over slavery in the territories. Yet, strange to say, notwithstanding this array of authority derived from the clear language of the Constitution, its harmony with similar provisions in respect to which there has never been any dispute, and with the known dispositions of its framers on the subject of slavery, the confirmation which the construction we give to it has derived from contemporaneous expositions, the opinions of our writers upon public law, and the solemn decisions of our highest judicial tribunals, all sustained by an exercise of the power which, in point either of solemnity of the Acts,

general acquiescence, or long duration, is without a parallel in our history, the existence of this power is now denied. Nay, more, that denial is made by our Southern associates in politics a basis of a proscription of their political brethren at the North as despotic as it is unjust.

The Federal Constitution is truly a sacred instrument; by far the most important state paper that exists in the world. Its authors were not only men possessed of rare capacities, but were also pre-eminently patriotic. Coming victorious out of the noblest conflict that ever occupied the hearts and arms of men, the Constitution, the second great work of their hands, received the impress of that magnanimous and fraternal spirit by which they had been actuated at every stage of the fiery ordeal through which they had been obliged to pass. The rights and interests and duties of all persons subject to their control were severely scrutinized, and to the utmost practical extent provided for with wisdom and justice. So well was the great task before them performed that the experience of more than half a century has discovered but little to be added to its provisions. The prolific source of unparalleled prosperity and happiness to our own country, it has stood proudly forth as the day-star of liberty to all the world; obscured for a season by selfish influences, its rays have slowly but gradually penetrated the recesses of arbitrary power. What American heart did not expand with pride and gratitude when a prayer for institutions like those of the United States was the first voice that was heard in regenerated France at the close of that brief but fierce contest, in which the tyrannical institutions of ages were in the twinkling of an eye swept into the "receptacle of things lost on earth."

A Constitution which has become a subject of such mighty import, and the overthrow of which would fill the friends of human rights throughout the world with dismay and despair, cannot be too vigilantly guarded by those who have the happiness to enjoy its benefits. This revered instrument, the earliest, the ripest and best fruit of our glorious struggle for independence and freedom, contains already as many stipulations in support of slavery as our political fabric can sustain. Viewed in regard to the political and local interests of the members of the confederacy, it is too clear to admit of doubt that those which were the principal seats of slavery, and in which it was most likely to continue, were not from that fact losers, but gainers, in the settlements of the Constitution. They have had an excess of members in the House of Representatives over the same number of electors in the Free States more

than sufficient to control the legislation of the government in most of the controverted questions of national policy which have existed since the establishment of the Constitution. The equivalent for this great advantage in the taxation, according to the same ratio, has not only proved insufficient, but has in practice wholly failed. No reflecting man can for a moment believe that if the terms of the Union were now to be readjusted on principles of abstract justice, this provision of the Constitution would stand the slightest chance of adoption. But those who secured our liberties and formed our Constitution made this stipulation also, and we, their descendants, will be the last to depart from it or to complain of its existence. Knowing the condition of our Southern brethren in regard to this institution as perfectly at the commencement of the Revolution as at its close, — feeling that the creation of it by the mother country against the remonstrances of the colonists was one of the grounds of the Revolution itself, and appreciating the difficulties and delay which must inevitably attend the removal of the evil, — the framers of the Constitution made every necessary provision to protect the States in which it existed in the exercise of the fullest discretion over the subject within their own boundaries. We respect the memories of those illustrious men for the sense of justice, the magnanimity and good faith which prompted this conduct. Our reverence for their acts and admiration for their characters would not be so great if, after achieving by the common toils and sacrifices the independence of the common country, those who were happily exempt from this fatal fruit of British policy had denied to their less fortunate associates protection against dangerous and harassing interferences from abroad, and had not referred the selection of the time and the method of removing the evil to those whose welfare is so deeply involved in the question.

We are aware that in the present improved state of the opinion of the civilized world on the subject of human slavery, this sentiment will be exposed to severe criticism. But those who dissent from it will do gross injustice to the great and good men who made those provisions, and to us who feel it to be our duty to abide by the stipulations which those provisions contain, if they assume that our patriotic forefathers were, or that we are, in favor of slavery, still less of propagating it in lands which are now free. Notwithstanding the framers of the Constitution assented to such provisions, dictated by imperious necessity, their aversion to slavery was of the deepest character, and was most strongly manifested by the representatives from the Slaveholding States.

The delicacy as well as the extent of this feeling is illustrated by the circumstance that, looking with characteristic foresight to the distant future, believing that the same Providence which had carried them through the perils of the revolutionary struggle would in its own good time, and by methods and agencies which they could not discern, relieve their beloved country from the evils of slavery, and determined that when that happy period should arrive, the Constitution, which they fondly hoped would be perpetual, should contain no trace of an institution so inconsistent with the great principles of human liberty and natural right on which it was founded, they would nowhere, even in the provisions relating to the subject, suffer the words "slave" or "slavery," or any terms recognizing the idea of property in human beings, to appear on the face of the Constitution. And we, who are enjoying the inestimable benefits of their sacrifices and their success, had only to choose between the alternatives of adhering to or violating the pledges and compromises which they made virtually in their hour of peril and conflict, and ratified in the moment of their common triumph. We chose the former alternative, and have most faithfully discharged the obligations of our position. For many years have the fearless and honest-hearted Democracy of the North exposed themselves to political embarrassment and injury by their efforts to secure to their brethren of the South, of all parties, the enjoyment of the rights guaranteed by the Constitution. Nor have the people of the North generally been wanting in their duty, even according to the most generous construction of it, in this respect. When the agitation in this country which followed the emancipation in some of the islands of the West Indies was supposed to tend to violent means or fanatical measures, the sympathy and support of the whole North, without distinction of party, were manifested by expressions of public sentiment which for their explicitness, unanimity, and enthusiasm are almost without a parallel, and which were certainly effectual to reassure the South of the entire fidelity of the mass of the Northern people to the guaranties of the Constitution. In these efforts to brighten the fraternal chain which binds the Union together there were two instances in which the Democratic party were carried farther than their local opponents, and quite as far as many of their firmest and best members could approve. The spirit of the Revolution, the Bill of Rights, and the Constitution had invested no subjects with more of reverence and respect than the right of petition and the liberty of the press. Not ignorant of the advantage which they would thus give to their adversaries at home, but confiding

in the representations of danger to the peace and safety of the South from the sources complained of, they did not hesitate to sustain a rule of the House of Representatives as to the disposal of abolition petitions and a bill in regard to the transmission of inflammatory publications through the mail, which were stigmatized with much plausibility and popular effect as inconsistent with those great and cherished rights. On a careful revision of the past, we are satisfied, and we believe that the judgment of impartial posterity will decide, that if the Democracy of the North have erred at all, it has never been in not going sufficiently far to sustain their fellow-citizens of the South.

[Samuel J. Tilden.] It is under these circumstances, and with such claims upon the forbearance and the justice, not to say the gratitude, of the South, that we are called upon to assume the extraordinary and untenable position which we have discussed. We are called upon to deny the constitutional power of Congress to prevent or prohibit slavery in any territory which is or may come within the jurisdiction of the Federal Government; to deny equally the constitutional power of the people of such territory, while in a territorial condition, to prohibit slavery; and to assert the constitutional right of any individual to go into any such territory and hold slaves there as effectually as he can do in any State where slavery is expressly authorized by law. Farther, as we have already shown, the doctrine could not be carried without destroying the foundation of slavery itself, even in the States. This doctrine has been deliberately adopted and promulgated by the Democratic Conventions of Virginia, Alabama, and Florida, and in many other forms by our Southern brethren; and the Democracy of the North are called upon also to adopt it and make it a part of their political creed and an element of their issue with their political opponents in their own localities. We are called upon to repudiate as unconstitutional the power of Congress over the territories which has been exercised from the very foundation of the government and under all administrations. We are called upon to deny all power in Congress, which has the government of the territories, and in the people of the territories to prohibit slavery, but to affirm the power of any one individual to establish it within the territories. No man is compelled to hold slaves even where slavery is expressly authorized by law; and if any man, who chooses to do so, can hold slaves in territories, slavery is just as much established there as in the States where it is upheld by positive enactments.

The doctrine is, therefore, when plainly stated, that wherever

the flag of the Union goes, it carries slavery with it; it overturns the local institutions, no matter how strongly intrenched in the legislation, the habits and affections of the people, if freedom be their fortunate condition, and establishes in its place slavery; it repeals the local laws, if they guarantee personal freedom to all, and authorizes slavery. This doctrine we are required to adopt and advocate. Nowhere found in the Constitution, repugnant to its spirit, and abhorrent as we have shown it to be to the principles and convictions of the illustrious men who framed it, we are called upon to interpolate this new theory upon the Constitution as a sort of mystical common law not expressed, not implied in any particular part, but to be inferred from the general nature of that instrument. We are called upon to do so by our ancient friends and allies, with whom we have been long associated in the ties of political brotherhood, and for whom we have often made great efforts and sacrifices, and perilled our political existence at home. We are called upon to do so under the menace of political disfranchisement and degradation if we refuse at once to believe, or profess to believe, this new and startling doctrine. We are told that no one who does not make such professions shall be allowed, as far as the political action and support of our old friends and associates can control the result, to receive the highest honors of the Republic; that our ancient and intimate association shall exist only for the purpose of allowing us to vote for candidates for the Presidency and Vice-Presidency who hold their opinions and repudiate ours on this great question; but that it shall not exist for the purpose of allowing us to nominate or vote for or elect a President or Vice-President who shares with us our convictions, no matter if a majority of the party agree with us; and that our Southern associates will, under no political necessity whatever, support any man who entertains the opinions which have, with unexampled unanimity, been expressed by the conventions and legislative assemblies of nearly all the Northern States.

[Martin Van Buren.] The Democracy of New York are wholly unwilling to believe that the unkind, ungenerous, and unfraternal proceedings which it has been our painful duty to expose, emanated from the Democratic masses of the South. The high opinion we have ever cherished of their liberality and justice, as well as the hallowed recollection of a long-continued, useful, and honorable political association, forbid it. Were it otherwise, we should be obliged now to regard that connection as forever dissolved, however painful might be this indispensable act of self-respect. We prefer to believe that the extraordinary pretence we

have discussed is rather an excrescence which has sprung from the struggles of party leaders at the South for local ascendency, and through its influence, for the control of Federal politics. It is well known that a schism arose in the Democratic ranks at the South toward the close of Mr. Madison's administration, was continued through that of Mr. Monroe, and still exists in almost every Southern State. Nor can it have been forgotten to what extent one of the sections which that schism produced sought to influence the North by holding up to them the tempting lures of a Bank of the United States, internal improvements by the General Government upon a gigantic scale, and—may we not add?—a protective tariff, and every other scheme which a latitudinarian construction of the Constitution would allow, and which might tempt the cupidity of a thriving commercial population. This attempt did not succeed. A large portion of the Republicans of the South adhered to the doctrines, in these respects, of Jefferson, as illustrated and enforced by Nathaniel Macon, Spencer Roane, and their compatriots. Vast majorities of the Northern Democrats made the cause advocated by these great and good men their own; and that contest was terminated by General Jackson's throwing the weight of his overshadowing popularity into the same scales. Soon thereafter a new spirit appeared to have come over the dreams of many of our Southern friends. They disavowed, with vehemence, the latitudinarian doctrines to which they were supposed to have been attached, and claimed to be regarded as among the strictest of the disciples of the State-right school of politics.

Slavery and its immunities, its privileges, its sanctities, and its blessings, soon became the theme of their discourses; and to that era may be traced the origin of those doctrines which have since followed each other in such rapid and astounding succession. From that evil hour, also, those whom we regarded as the old-school Democrats of the South appear to have entered in a race with their local opponents as to which should outstrip the other in defending and propagating slavery. Out of this ill-starred rivalry have sprung the extraordinary doctrines which we have brought to the test of truth and justice. We do not intend to pass upon the relative merits or demerits of the parties. It is well known that the feelings of the New York Democracy have been long and earnestly enlisted in behalf of one of the sections to which we have referred. It is due to candor to say that the present position of things has unavoidably lessened this preference, as well as diminished their power with the masses here to secure impartial justice to both. We ask them to believe that the principle of

extending slavery to territories now free from it can never be made acceptable to the freemen of the North, and assure them, in the most absolute confidence, that the few persons at the North who for sinister objects strive to make it so, will soon, very soon, be buried under a load of public obloquy in a grave from which there will be no resurrection.

The views which we have taken of the condition of the public mind at the South and of the origin of the imperious demands made upon us render it improper that we should reply to these demands in the language which their nature would seem to justify; and having shown how totally they are without warrant in the Constitution, we proceed to consider dispassionately the remaining grounds which have induced our old associates to put forth in the face of the country such extraordinary and unprecedented pretensions.

One of those grounds is, if we understand it aright, that inasmuch as many of them are by habit and necessity slaveholders, it will be an inconvenience and injury for them to settle in the new territories without their slaves, and that the exclusion of slavery from those territories is therefore unjust to them. The other ground is that such an exclusion would be a reproach upon their present condition within their own States, and would be destructive of the equality to which they are entitled under the Constitution. And the principles of these objections are alike applicable to Oregon and to the territories which we have acquired or may acquire from Mexico.

Sensitive as our Southern brethren are known to be to everything which affects their honor, can it be possible that they have so long habitually, and without objection, acquiesced in a course of legislation which can be justly regarded as a personal indignity to them as individuals or as a class? For sixty years past, Congress has applied the restriction against slavery to territories of the United States by solemn Acts in which the Southern representatives were not only participants, but often leaders; it has done so without opposition or complaint, and in the case of territories which had not only been acquired by the joint expenditure of the blood and treasure of all the members of the confederacy, but which had been ceded to the United States by Virginia, and in which slavery legally existed. Under the Confederation, in 1787, it applied that restriction to the whole northwestern territory. In 1800 it did so in regard to the territory of Indiana. In 1805 it did so in regard to that of Michigan. In 1809 it did so in regard to that of Illinois. In 1836 it did so in regard to

that of Wisconsin. In 1838 it did so in regard to that of Iowa. Can it be believed that these repeated solemn Acts could have been passed with such unanimity and have been received with such general satisfaction if an exclusion of slavery in the territories by Act of Congress is in its nature, and necessarily, a reproach upon the character, domestic condition, equal rights, or constitutional immunities of the citizens of the Slaveholding States? And by whom have the very territories subject to these restrictions been settled? The tide of emigration has moved steadily to them from the Slaveholding States. Thousands and tens of thousands have sold their slaves and gone to these abodes of free labor. Many such, and more, of their descendants have represented and now represent the States formed from these territories in the Congress of the Union. Let any of these emigrants from the South be asked whether the idea of individual or sectional degradation of themselves or their fathers in consequence of the prohibition of slavery in the new home which they chose, ever occurred to them? Let them be asked also whether they regret having been compelled to exchange slave for free labor? We venture to say that with one accord they will answer both questions in the negative. The idea is one of modern suggestion, and sprang from the scheming brain of the politician, rather than from the unsophisticated hearts of the freemen of the West or South.

It being then very evident that there is no reasonable ground for offended pride on the part of our Southern brethren in the adoption of the measure under consideration, the true condition in other respects of the slaveholder in regard to it may be briefly stated. If he desires to remove to a new region, he may select that portion of the unsettled lands which have been recently attached to the United States, and which will for a long succession of years afford ample room, a good soil, and a congenial climate for the employment of slave labor; or he may dispose of his slaves and go to the territories which are exempt from slavery, employ free labor, and enjoy every privilege and all the consideration which is possessed by any other citizen.

In regard to the question whether the necessity he would be under of making the exchange from slave to free labor would be injurious to him, he is fortunately not without the authority of ample experience. The present condition of thousands of those who were once the owners of slaves, but are now the inhabitants of the Free States of the West and the employers of free labor, will afford a true and conclusive answer. If there be still any disad-

vantage which will result to him from the measure we advocate, let it be fairly stated and impartially weighed against the grave considerations which exist in favor of its adoption.

The immense Territory of Oregon, and that virtually acquired from Mexico, are now presented to Congress and the people in the same aspect, as respects this question, as was the great Northwestern Territory to the Congress and people of 1787. That territory was then a wilderness; it now contains the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, which are all Free States, and contain a population of between four and five millions.

They are large enough, both in geographical extent and in population, to constitute a great republic and to maintain themselves against the world. The momentous question whether they should be Free or Slave States was settled by the ordinance of 1787 and its subsequent enforcement by Congress under the Constitution. There can be no doubt that the great men who formed and favored the provision against slavery in that celebrated instrument foresaw their rapid growth and future greatness. Georgia and North Carolina made the condition in their cessions of their vacant territories that Congress should not impose on them the clause of the ordinance of 1787 which prohibits slavery; and Tennessee, Mississippi, and Alabama, which were formed out of the territories ceded by them, subject to this condition, are Slave States. Virginia not only did not exact such a condition, but cheerfully supported that ordinance with the prohibition in it; and the States which have been formed out of the territory which was ceded by her and became subject to the prohibition are, and will forever remain, Free States. The difference between their conditions in this respect cannot be imputed in any considerable degree to a difference of climate, but must be ascribed to the legislation under which they were during the period when they were settled and the character of their institutions formed.

Kentucky, one quarter of the whole population of which are slaves, and Ohio, which is an example of the most successful development of free labor, adjoin each other. The one is a Slave, and the other is a Free State, because of the different laws to which, while territories, they were subjected. They illustrate the controlling influence of legislation in shaping, in this respect, the character of communities, and they illustrate also the infinite superiority of free labor in advancing the prosperity of a State.

The settlement of the extensive domains of Oregon and California is now to be begun in earnest, and they will, within the lives

of many persons already in existence, be as numerously, perhaps as thickly, peopled as is now what was once the Northwestern Territory. The President has recommended that provision be made for their temporary government while they remain territories; the duty of Congress and the necessities of the inhabitants of these territories require that such provision be made. Upon the character of that provision in relation to slavery it will, in all human probability, depend whether the States which are to spring up in this vast and fertile region shall be Free or Slave States. The question has thus arisen in a practical form. It can no longer be evaded or postponed. It is upon us. We must decide it. Shall these vast communities be the creations of free or slave labor?

They cannot be both. If experience has conclusively established any one fact in political or natural history, it is that free and slave labor, in the enlarged sense in which they must here be regarded, cannot flourish under the same laws. Where labor is to a considerable extent committed to slaves, to labor becomes a badge of inferiority. The wealthy capitalists who own slaves disdain manual labor, and the whites who are compelled to submit to it are regarded as having fallen below their natural condition in society. They cannot act on terms of equality with the masters for those social objects which in a community of equals educate, improve, and refine all its members. In a word, society, as it is known in communities of freemen, with its schools and its various forms of voluntary association for common benefit and mutual improvement, can be scarcely said to exist for them or their families. The free laborers are unwilling to work side by side with negro slaves; they are unwilling to share the evils of a condition so degraded and the deprivation of the society of their own class, and they emigrate with great reluctance, and in very small numbers, to communities in which labor is mainly performed by slaves. No candid and intelligent Southerner will seriously controvert these facts; they have been demonstrated in the experience of the old States. With the exception of a few, and comparatively a very few, the white laborers, or, in other words, the poor of those States where slavery is more extensively prevalent, are objects of commiseration and charity to the wealthy planter, and of contempt and scorn to the slaves.

The existence of slavery in our vast unsettled domains to a sufficient extent to give tone to society will operate by the strongest motives which can or ought to affect the human mind to exclude free laborers from emigrating to those regions. The planter

who complains that he is excluded if he cannot hold slaves there, is, at most, subjected to but an injury to his property, even if such injury result at all. The free laborer, on the other hand, if slavery be allowed, suffers not merely an inconsiderable pecuniary injury, but a sacrifice of all the cherished objects of social and political life, the degradation of himself and of his wife and children, for whose sake, perhaps, he has encountered the trials and perils of emigration to an unsettled country; he incurs evils infinitely greater than those which excited our heroic ancestors to armed resistance. If then it be conceded that the introduction of slavery operates to exclude the free laborer, it must be admitted that the penalty by which the exclusion is enforced is infinitely more severe against the laborer in the one case than against the planter in the other. It ought to be borne in mind, also, that the exclusion operates upon a vastly greater number in the case of the free laborers than in that of the planters. It may be safely estimated that the annual increase of the Free States alone is not less than four hundred thousand. The emigration from Germany, Ireland, and other parts of Europe during the last year was above two hundred thousand. The resort to our shores of those who seek in our happy institutions and fertile soils a refuge from oppression and starvation at home has but begun; and the emigration from the over-populated countries of Europe to our vacant territories is probably destined, in increased facilities of communication, to outstrip any anticipation, and to form a great feature of our present age. But without looking forward beyond the present, the increase of the population of the Free States by birth and by immigration during the year past cannot be less than six hundred thousand. To that vast number might properly be added the increase of the white population of the Southern States who do not hold slaves. But omitting them, how do the numbers of the probable emigration to our territories of the planters and free laborers compare? The whole number of those who hold slaves has been estimated not to exceed three hundred thousand. From these facts it may be safely inferred that the number of free laborers who will annually desire to improve their fortunes by removal to the territories will be greater than the whole number of slaveholders in the United States.

Whether these free laborers shall be excluded from our unoccupied regions, or at least from large portions of them, will, as it did in relation to the adjacent States of Ohio and Kentucky, depend mainly upon the provision which Congress shall make in regard to slavery in organizing the governments of these territories. Let

no one be deluded by supposing that slavery has not the capacity to occupy these territories to a sufficient extent to inflict upon their inhabitants the blight which attends free labor wherever that institution exists. Experience has shown the contrary. Moreover, the slaveholders who may monopolize its soil and hold as property the men who till that soil will not of necessity come only from the present Slaveholding States. They are unfortunately by no means the only persons who may be found willing to enjoy the supposed luxuries of the system, if countenanced by the law of the land. Let capital be invited to such investments by the policy of the Government, and it will come from other States, and perhaps from foreign countries, and the institution of slavery will not fail for the want of abetters. It is against the hundreds of thousands of our own descendants, who must earn their bread by the sweat of their brows, and hundreds of thousands of children of toil from other countries, who would annually seek a new home and a refuge from want and oppression in the vacant territories, that this unjust exclusion is sought to be enforced under the penalty of social and political degradation. Can it be that those statesmen who have shown such alacrity to turn their backs upon this great and growing interest can have considered its character and magnitude? Can it be that they have been mindful of the peculiar duty which our Government owes to the laboring masses, to protect whom in their rights to political and social equality, and in the secure enjoyment of the fruits of their industry, is at once its object and its pride?

From the first institution of government to the present time, there has been a struggle going on between capital and labor for a fair distribution of the profits resulting from their joint capacities. In the early stages of society the advantage was altogether on the side of capital; but as education and intelligence are diffused, the tendency is stronger toward that just equality which all wise and good men desire to see established. And although capital, providing and controlling every species of machinery, has heretofore in the main directed that of government also, the true relation of the elements of production are beginning to be understood. Men's minds have everywhere turned, and will continue to be turned, to the contemplation of the value of labor; and an enlightened sense of justice is inclining them to seek out the means of securing to him who labors a consideration in society and a reward in the distribution of the proceeds of industry more adequate than his class have heretofore received. The truth that the wealth and power of a country consist in its labor, and that he who contributes

most to its industry is the most useful among its benefactors, has become familiar. Nowhere is this truth more evident, or should it be more respected; nowhere should the rights of the toiling masses be more distinctly appreciated and more amply protected than in our comparatively new but already great country. The increasing power of correct opinion on this subject is illustrated by recent events in France. That great nation, which a few years ago achieved a revolution, the whole fruits of which were a change of the title of their monarch from "King of France" to "King of the French," and limiting hereditary titles of nobility to life estates, and which seemed content that the sovereign should remain master of all if only the symbols of his authority were less plainly visible, has just prostrated the institutions of ages. It had been the work of centuries in that country to impoverish and debase the children of industry, and enrich a favored few. Yet the system of which these were the objects has been overthrown with the naked hands of the laboring masses, strengthened by the rising power of the great truth to which we have referred. And what is the first object to which the attention of the new Government is directed? Why, to break down obstacles which had so long prevented the laboring classes from receiving the consideration and rewards to which they are equitably entitled.

And shall we, whose government was instituted to elevate and ennoble the laboring man, and has rested for sixty years in security and honor on his intelligence, dignity, and integrity, now, in view of this glorious imitation abroad and entire success at home, abandon a policy in regard to slavery which has been pursued from the commencement of our government, and which is so vitally important to its true end and object? We shall be greatly deceived if those who have been tempted, by the hope of evanescent honors or temporary advantages, to advocate so disastrous a change of policy do not hereafter deeply regret their apostasy. The laboring classes, far more respectable in this than in any other country, can spare comparatively little time for reading, and such truths as we have set forth are often slow in reaching them; but in the end do reach them, and are embraced with unyielding tenacity. Thus it was with the plan for an Independent Treasury. All will remember the assaults which were made upon that measure by the selfish and the venal. The depreciation of the value of labor was prominent among the thousand evils which were predicted from its establishment. Such misrepresentations deceived many, and election after election was lost in consequence. The truth at length reached the masses; and what man is found to raise his

voice against the Independent Treasury? What other Democratic measure has ever been adopted which neither a Whig Congress nor a Whig Legislature finds it safe to assail?

We have thus presented some of the prominent considerations which have induced the Democracy of this State to assume the position they now occupy on the subject of slavery, and have endeavored to reply with calmness and moderation to some of the grounds on which that position has been assailed. If we have been in any degree successful, we may claim to have shown that the views entertained by the Democrats of New York, so far from presenting any excuse for their proscription by their political associates, are those which the highest obligations of constitutional liberty require them to maintain. They have sent, in conformity with established usage, thirty-six estimable and influential citizens to communicate their wishes, in regard to the approaching Presidential election, to the representatives of the Democracy of other States who are soon to assemble at Baltimore. Their desire is kindly and dispassionately to confer with their brethren of the Union, in the hope of securing the safety and success of that great and patriotic party at whose hands the cause of true freedom has uniformly received a strong, steady, and generally successful support. They regret to be apprised that a design should exist in any quarter to exclude their delegates from such conference, or to neutralize their voice by associating with them persons not delegated by the party and not speaking its sentiments. We are conscientiously satisfied that there is no room for an honest difference of opinion in regard to the right of the Delegates selected by the Utica Convention to sit in the National Convention which is to assemble at Baltimore for the nomination of Democratic candidates for President and Vice-President. If a question is made as to their right, it must be decided, not compromised. Those delegates should not be insulted by the request that they should yield one particle of the weight to which, as the sole representatives of the Democracy of this State, they are justly entitled. Expedients resorted to where no difference of opinion existed on either national questions or national candidates, and by which a decision of a controversy purely local was postponed until such difference should arise, can have no application to such case. Neither of the distinguished Republicans selected by the Utica Convention to represent the Democracy of this State required the instructions of that body to know that perpetual disgrace would await him if he surrendered any portion of the high trust confided to him, and no instruction was therefore given.

The simple question, if any, which the Baltimore Convention will be called upon to decide, will be the exclusion or admission of those delegates; and it may be proper for us to add that such decision appears to us of momentous importance, from our conviction that while past experience has shown that the Republicans of this State will submit to great injustice for the vindication and establishment of their principles, the exclusion, actual or virtual, of their representatives for the purpose of overthrowing their principles is an imposition which would be fatal to those who should practise it.

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